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UNITED STATES COPYRIGHT ROYALTY JUDGES

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IN THE MATTER OF:)
) Docket No.
DETERMINATION OF CABLE) 14-CRB-0010-CD
ROYALTY FUNDS) (2010-2013
-----X

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Pages: 227 through 491 (with excerpts)

Place: Washington, D.C.

Date: February 15, 2018

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6 DETERMINATION OF CABLE) 14-CRB-0010-CD
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10 BEFORE: THE HONORABLE SUZANNE BARNETT
11 THE HONORABLE JESSE M. FEDER
12 THE HONORABLE DAVID R. STRICKLER
13
14 Library of Congress
15 Madison Building
16 101 Independence Avenue, S.E.
17 Washington, D.C.
18 February 15, 2018
19
20 9:13 a.m.
21 VOLUME II
22
23
24 Reported by: Karen Brynteson, RMR, CRR, FAPR
25

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P R O C E E D I N G S

(9:13 a.m.)

JUDGE BARNETT: Please be seated. I apologize for the late start. We were sort of hoping Ms. Whittle would appear. We haven't heard from her, and it's highly unusual. But we will proceed as most of the exhibits, I think, at least for the beginning, are agreed and admitted, so we can proceed.

Before we do that, we have conferred and deliberated with regard to the SDC motion to strike the third errata to Dr. Gray's written rebuttal testimony. It is our conclusion that the third errata is not merely an effort to correct typographical errors or minor discrepancies. Rather, it is a new analysis by Dr. Gray.

And it is too late in this proceeding to have a new analysis introduced, and for that reason we will grant the motion of SDC and not consider the third errata in this proceeding.

I think that means you can figure out then which of those exhibits that were in limbo will be admitted, although there may still be some that are on the fence, and that's fine.

1 And so we are beginning with
2 Mr. Trautman; is that correct?

3 MR. LAANE: That's correct, Your
4 Honor.

5 JUDGE BARNETT: All right.

6 Before you're seated, if you could
7 please raise your right hand.
8 Whereupon--

9 JAMES TRAUTMAN,
10 having been first duly sworn, was examined and
11 testified as follows:

12 MR. LAANE: Good morning, Your Honors.
13 It has been a while since we last spoke. I'm
14 Sean Laane for the Joint Sports Claimants.

15 DIRECT EXAMINATION

16 BY MR. LAANE:

17 Q. Mr. Trautman, would you please
18 introduce yourself to the Judges?

19 A. My names is James Trautman, and I am
20 managing director of Bortz Media & Sports
21 Group.

22 Q. And could you please give us a brief
23 overview of your educational background?

24 A. Sure. I have a Bachelor's degree in
25 economics from Claremont McKenna College and an

1 MBA from the University of Colorado.

2 Q. And what is Bortz Media & Sports
3 Group?

4 A. Bortz Media & Sports Group is a
5 research and consulting firm that assists
6 clients in the media and sports industries with
7 respect to issues relating to valuation,
8 business development, market analysis, survey
9 research, and a variety of other areas.

10 Q. How long have you been with Bortz
11 Media?

12 A. In one form or another, since 1983.

13 Q. And what do you do at Bortz Media?

14 A. I am -- I direct the media and
15 entertainment practice at the firm. And my
16 responsibilities include working with clients
17 in the content, content owners, programming
18 networks, cable system operators, industry
19 associations, broadcast stations, and the like.

20 JUDGE BARNETT: Mr. Laane, could you
21 move that microphone directly in front?
22 Thanks.

23 MR. LAANE: Is that better? Is that
24 better, Your Honor?

25 JUDGE BARNETT: A little bit -- yeah,

1 is it on? It is on. Okay. That's -- more
2 centrally located would be good. Thank you.

3 MR. LAANE: All right.

4 BY MR. LAANE:

5 Q. And is part of what you do in your
6 work market research and analysis?

7 A. Yes, it is. And that includes survey
8 research as well as analysis of industry trends
9 and other types of market analysis.

10 Q. Okay. And do you perform valuation of
11 both networks and programming?

12 A. Yes. We value content rights on
13 behalf of owners of content and then we have
14 been asked to provide fair market valuation,
15 valuations of programming networks, broadcast
16 stations, and cable systems.

17 Q. Now, you mentioned your market
18 analysis works includes survey research. What
19 types of survey research do you do at Bortz
20 Media?

21 A. We occasionally do consumer research
22 but typically are engaged in overseeing
23 business-to-business research and typically
24 through telephone interviewing methodology.

25 Q. And how long have you been engaged in

1 doing survey research work?

2 A. Really since the beginning of my
3 career.

4 Q. Now, putting to one side for the
5 moment the surveys that you've done for these
6 copyright royalty proceedings, about how many
7 surveys have you done for your media industry
8 clients?

9 A. We've completed approximately 75
10 survey research assignments.

11 Q. And do you represent businesses on
12 both the programming side and on the operator
13 or distribution side of the media industry?

14 A. Yes, we do. We represent -- we have
15 represented programming networks including
16 ESPN, Discovery, the former Scripps Networks,
17 A&E, MTV Networks, and a number of others. And
18 on the CSO or operator side of the business,
19 we've worked with Comcast, Cox Communications,
20 the former Time Warner Cable prior to its
21 acquisition by Charter, a number of other
22 smaller cable operators, and the industry
23 association, the NCTA.

24 Q. That's, I guess, the group that now
25 calls themselves the Internet and Television

1 Association?

2 A. That's correct.

3 Q. Okay. And they used to be the
4 National Cable Television Association?

5 A. They were the National Cable
6 Television Association and then the National
7 Cable and Telecommunications Association.

8 Q. Okay. How about television
9 broadcasters? Can you give us some examples of
10 your television broadcaster clients?

11 A. Sure. We've been retained by both the
12 ABC and CBS broadcast networks, and also by
13 station groups including Gannett, Tribune, and
14 Landmark Communications.

15 And we've also worked with PBS and the
16 Corporation for Public Broadcasting as well as
17 individual stations there including -- and the
18 association, the association for Public
19 Television stations.

20 Q. Now, turning to these copyright
21 royalty matters, have Bortz Media and you been
22 involved in previous Copyright Royalty Board
23 proceedings?

24 A. Yes, going back to the 1983
25 proceeding, in fact.

1 Q. And have you testified in previous
2 cable royalty distribution proceedings before
3 today?

4 A. Yes, I testified in the 1990 to '92,
5 1998-'99, and 2004-'05 proceedings.

6 Q. And what, just in general terms, did
7 you testify about in those proceedings?

8 A. The central feature of my testimony
9 was the cable operator surveys that we
10 performed on an annual basis in those years and
11 the years leading up to the current proceeding.

12 Q. And in those proceedings, were you
13 offered as an expert witness and accepted to
14 testify as an expert?

15 A. Yes, I was.

16 MR. LAANE: Your Honors, we would
17 offer Mr. Trautman as an expert in market
18 research, including survey research, applied
19 market analysis, and valuation in the cable and
20 broadcast television industries.

21 JUDGE BARNETT: Hearing no objection,
22 Mr. Trautman is so qualified.

23 BY MR. LAANE:

24 Q. Mr. Trautman, what was your assignment
25 in the proceeding we're here for today?

1 A. Well, it was twofold. First, it was
2 to conduct cable operator surveys for the
3 period from 2010 to 2013 and to prepare a
4 detailed report summarizing the findings of
5 those surveys and the methodology.

6 And then the second aspect of my
7 assignment was to review testimony from other
8 parties relating to that -- that research and
9 provide written rebuttal testimony addressing
10 that.

11 MR. LAANE: If I may approach the
12 witness just to give him a binder with his
13 testimony.

14 JUDGE BARNETT: You may.

15 MR. LAANE: Thank you. Would the
16 court reporter like a copy?

17 BY MR. LAANE:

18 Q. Mr. Trautman, I am handing you what
19 has already been admitted in this matter as
20 Exhibits 1000, 1001, and 1002. Could you first
21 please tell us what Exhibits 1000 and 1001 are?

22 A. Exhibits 1000 and 1001 are my written
23 direct testimony and the accompanying report
24 addressing cable operator valuation of distant
25 signal non-network programming.

1 Q. Okay. And what is Exhibit 1002?

2 A. That is my written rebuttal testimony.

3 Q. And what was your role in the
4 preparation of Exhibits 1000, 1001, and 1002?

5 A. I had direct responsibility for the
6 preparation of all of those.

7 Q. And do you declare that Exhibits 1000
8 and 1001, your written direct testimony,
9 including the incorporated Bortz report, are
10 true and correct and of your personal
11 knowledge?

12 A. I do.

13 Q. And do you declare that Exhibit 1002,
14 your written rebuttal testimony, is true and
15 correct and of your personal knowledge?

16 A. I do.

17 Q. Okay. Thank you, Mr. Trautman.

18 Now what I would like to do is focus
19 in a bit more on your Bortz survey discussed in
20 Exhibit 1001. What is the question your
21 research is seeking to answer?

22 A. We are seeking in our cable operator
23 survey to determine how cable operators would
24 have valued distant signal programming in a
25 free market, absent compulsory licensing.

1 Q. And what methodology did you use to
2 address that question?

3 A. Well, we're seeking to obtain a
4 relative valuation, so we chose to use what's
5 referred to as a constant sum methodology for
6 the key survey question.

7 Q. Okay. And why did you use a constant
8 sum question in the survey?

9 A. We feel -- while it's certainly an
10 accepted market research tool, but in addition
11 to that, we feel that it's particularly suited
12 to allocation of value particularly in
13 instances where you want to get proportionate
14 relative value allocations.

15 Q. Now, putting to one side these
16 proceedings, just in your regular work for your
17 media industry clients, is a constant sum
18 survey a technique that you use?

19 A. Yes, we use it -- we have used it on a
20 number of occasions, but we -- in particular,
21 we feature it in a annual cable advertising
22 study that we do on behalf of cable networks.

23 Q. Is the Bortz survey something that you
24 came up with and designed on your own or did
25 you also have input and expertise from others?

1 A. No, we've -- we've had considerable
2 input going all the way back to the initial
3 survey conducted in addressing the 1983
4 proceeding. That initial input was from two
5 professors at the University of Denver.

6 Subsequently, in terms of making
7 refinements and improvements to the survey, we
8 consulted with Dr. Gregory Duncan from the
9 University of California, Berkeley,
10 Dr. Angeline Li, who was the former head of
11 market research at Cox Communications, a
12 leading cable industry CSO, and we've consulted
13 with Sam Book, who was a market research expert
14 at Malarkey-Taylor Associates, and Dr. Len Reid
15 from the University of Georgia, and others.

16 Q. Now, I want to get into the
17 methodology in a little bit more detail in a
18 minute, but first let's take a look at the
19 bottom line results of the survey.

20 If you could turn to Table I-1 of page
21 3 of your report.

22 And, Jeff, if you could please put
23 that up on the screen.

24 So, Mr. Trautman, can you just, you
25 know, walk us through these results and explain

1 what they mean?

2 A. Sure. Well, the columns associated
3 with each year report the point estimate
4 results from the key allocation question from
5 the -- obtained from the survey respondents for
6 each year in which we conducted the survey.

7 And then the column on the right just
8 reflects the average of those four years.

9 Q. So, for example, if we look at 2010,
10 the figure 40.9 percent for live professional
11 and college team sports, what does that figure
12 mean?

13 A. Well, that suggests that in 2010 that
14 cable operators would have allocated
15 approximately 41 percent of the relative value
16 of their distant signal non-network programming
17 to that live team sports category and then, as
18 you can see down the line, it would have been
19 approximately 19 percent to news and public
20 affairs programs, approximately 16 percent to
21 each of the movies and syndicated shows,
22 series, and specials categories, and
23 4.4 percent to PBS or Public Television,
24 4 percent to devotional and religious
25 programming, and 0.1 percent to the programming

1 on Canadian signals.

2 Q. All right. Thank you.

3 And if you could turn to the next page
4 of your report, I wanted to ask you about
5 Figure I-1. And what is this graph showing us?

6 A. Well, this graph compares the average
7 shown on that previous table for 2010 to 2013
8 to the average from the cable operator surveys
9 that we conducted during -- for the 2004-'05
10 proceeding.

11 And you can see in looking at the
12 graph that there were some changes in the
13 responses in that the valuations on average for
14 2010 to 2013 went up for live team sports and
15 news and public affairs, as well as PBS, and
16 went down for the movies, syndicated shows,
17 series, and specials, and devotional and
18 religious categories.

19 Q. And do you have an opinion on the
20 likely reasons for those changes between the
21 two periods?

22 A. Sure. I believe that there were at
23 least two contributing factors. One is an
24 important improvement that we made to the 2010
25 to '13 surveys, where we were -- came to the

1 realization that there was a declining amount
2 of compensable programming on WGN America and
3 we had also recognized that that was an issue
4 that the Judges had raised in the '04-'05
5 proceeding, and so we came up with a method for
6 identifying the compensable programming on WGN
7 America when it was the only signal carried.

8 And I believe that contributed to
9 these changes. And then, in addition to that,
10 I think overall marketplace trends were a
11 factor. During this time frame, the access to
12 many forms of scripted programming and
13 entertainment proliferated widely and the
14 ability to make use of DVR technology and
15 on-demand technology became more widely
16 available and more widely used. And all of
17 those factors diminished in my experience the
18 relative value of other types of programming in
19 comparison with live programming, particularly
20 including live team sports.

21 Q. Turning now to a little more detail on
22 the methodology, can you just give us an
23 overview on how the survey sample is selected?

24 A. Yes. The survey sample is a
25 stratified random sample, and we use a

1 stratified sample for the purpose of obtaining
2 the most precise estimates that we can by
3 sampling proportionally more of the largest
4 royalty payers in relation to the systems that
5 pay smaller amounts in royalties.

6 Q. And if we could take a look at Figure
7 III-5 at page 38 of your report. And what does
8 this reflect?

9 A. Sorry, I am slower than the screen.
10 This shows the percentage of the total Form 3
11 royalties that are represented in the samples,
12 the cable operator survey samples that we draw
13 in each year.

14 And what you can see here is that we
15 have always had very robust samples. For
16 example, in '04 and '05, we were -- kept -- we
17 were taking samples that accounted for 50 to
18 55 percent of the total royalty pool, but that
19 percentage, due in part to industry
20 consolidation, has increased substantially, so
21 that from 2010 to 2013, our samples actually
22 accounted for between 70 and 85 percent of the
23 total Form 3 royalties.

24 Q. Now, did you see Dr. Frankel's
25 assertion in his amended written rebuttal

1 testimony that you should have included all --
2 should not have included all Form 3 systems in
3 the sampling frame, but instead should have
4 excluded systems carrying no distant signals?

5 A. I did see that, yes.

6 Q. Okay. Could you please explain why
7 you concluded it was appropriate to include all
8 Form 3 systems in your sampling frame?

9 A. Well, I think, first of all, it's
10 important to note that we -- we initially
11 sampled from a base of all Form 3 systems and
12 then exclude the systems with zero distant
13 signals, just as Dr. Frankel suggests, but we
14 felt and have always felt that it's important
15 to go directly to the source in terms of the
16 signaling information. And to do that, we have
17 to use the statements of account.

18 Dr. Frankel, in developing the
19 Horowitz survey sampling plan, relied on CDC
20 data. And while we believe CDC data eventually
21 becomes very accurate, we have found that it's
22 signal carriage information at the time we're
23 selecting our samples, which is shortly after
24 the closing of the royalty periods and the
25 filing dates and all of that, is -- is not as

1 accurate.

2 And so we felt it's better to go
3 directly to the statements of account.

4 Q. And what criteria did you use for
5 drawing the sample?

6 A. Royalties is the sole criteria. We
7 obtain a - what's called a remittance record
8 from the Copyright Office that lists all of the
9 royalty payers and the amount that they paid.
10 That's actually the only information on the
11 list.

12 And we clean that up, identify any
13 duplicates, things of that nature, and then
14 draw our sample based on that.

15 Q. And is there anything in that process
16 that your opinion injects any bias into the
17 survey?

18 A. Not at all.

19 Q. How much, if any, impact did weighting
20 by royalties have on the Bortz survey results?

21 A. Well, I think weighting by royalties
22 is important, but we have looked at our
23 unweighted results and compared them to the
24 weighted results and they are -- they are
25 nearly identical.

1 Q. Now, Dr. Frankel's criticism of your
2 sampling frame methodology was in his recent
3 amended rebuttal testimony. Was your use of a
4 sampling frame that included all Form 3 systems
5 disclosed in your report and the underlying
6 documents produced a year or so ago?

7 A. Yes. There was a great deal of
8 information about the sampling frame, including
9 a list of all the systems included in it and
10 the royalties that they paid and -- and a
11 variety -- a description of the process that we
12 went through and extensive information of that
13 nature.

14 Q. Any reason Dr. Frankel couldn't have
15 taken issue with your sampling frame
16 methodology in his initial rebuttal testimony?

17 A. Not that I can think of.

18 Q. Now, how does the sampling frame
19 methodology for the 2010 through 2013 Bortz
20 survey compare with prior iterations of the
21 Bortz survey?

22 A. It's the same methodology that we've
23 used for many years.

24 Q. Now, once the sample is selected, who
25 actually did the surveys of the systems in the

1 sample?

2 A. THA Research is our survey research
3 subcontractor.

4 Q. And why did you use THA Research?

5 A. Well, we have used THA on these
6 surveys and a number of others that we're
7 involved in since -- but on these surveys since
8 2001. They've been in the business
9 specializing in the cable industry for more
10 than 20 years. They've worked with a number of
11 different programming networks, Discovery,
12 Scripps, the Turner networks, and a variety of
13 others. And we find that they are particularly
14 adept at executive interviewing and have
15 particularly qualified executive interviewers.

16 Q. And were the interviewers informed
17 about who had commissioned the survey or for
18 what purpose?

19 A. No. They, of course, know that they
20 are working for Bortz, but they do not know who
21 our client is or what the purpose of the survey
22 is.

23 Q. And is that standard practice in
24 survey research?

25 A. Yes.

1 Q. If you could turn, please, to page 21
2 of your report and let's take a look at Figure
3 II-2. What is this table showing us?

4 A. This shows for each year our eligible
5 sample and the number of surveys we completed
6 and then that we achieved response rates
7 ranging from 52 to 57 percent, which are
8 excellent in the context of executive
9 interviewing and trying to reach busy
10 executives.

11 Q. All right. Let's go now to the survey
12 itself and if you could please turn to the
13 blank questionnaire form included in your
14 report at Appendix B-17 through 21. And you
15 can see we've got the first question up there
16 on the screen.

17 And we can see this is the survey from
18 2013. Was the same wording for the questions
19 used in each of the four years we're addressing
20 here?

21 A. Yes, it was.

22 Q. Okay. And at the top, this says ADS
23 version H. What does that refer to or I guess
24 it just says version H. What does the version
25 H refer to?

1 A. Well, we modify the wording in the
2 various versions of the questionnaire slightly
3 to make sure we avoid any potential confusion
4 with respondents.

5 And that's based on the signal
6 carriage pattern for a particular system. So
7 if a system carries ABC, CBS, or NBC network
8 signals, we remind them to exclude ABC, NBC,
9 CBS programming from consideration.

10 If they don't carry those signals, we
11 want to remove that reminder so that we don't
12 get them wondering why we're bringing that up.
13 And we make other changes like that and
14 including changes to the number of categories
15 that we ask about. So if no Canadian signal or
16 no Public Television signal or no live team
17 sports programming is carried, we won't include
18 that category in that version of the survey.

19 And, as a result, there are a number
20 of different versions of the survey. This
21 version H, we've included in the report because
22 it's kind of the everything is included survey.
23 So you can sort of -- this is actually one that
24 we don't see very often that actually gets
25 completed, because this assumes that all of the

1 types of signals are carried and all of the
2 other criteria in essence are met for having
3 all of the information in the survey.

4 Q. And if there was a system, for
5 example, where there wasn't sports carriage so
6 there was no line to allocate to sports on the
7 survey, how would that be reflected in the data
8 at the end of the survey?

9 A. Well, in recording the data, we would
10 -- we would record it as a blank, but in
11 calculating the results, we would -- we would
12 treat that as a zero.

13 Q. Okay. Now we can see here Question 1:
14 Are you the person most responsible for
15 programming carriage decisions made by your
16 system during 2013 or not?

17 What's the purpose of this question?

18 A. Well, we're attempting to, obviously,
19 solicit a response from a qualified respondent.
20 So in order to complete the survey, the
21 individual responding is required to
22 affirmatively answer that question.

23 Q. And what happens if they say no, I'm
24 not?

25 A. Then we ask them who would be the

1 person most responsible for programming
2 carriage decisions and get them to refer us to
3 someone else at the system or at the regional
4 level or wherever may be appropriate. And we
5 go on to attempt to reach that individual.

6 Q. Okay. Moving on to Question 2a,
7 please explain this and what would go in the
8 blanks there.

9 A. Well, to start with, we have two
10 warm-up questions, what I refer to as warm-up
11 questions, in the survey. This is the
12 beginning of the first one. And what we're
13 doing here is explaining to the respondent what
14 we're concerned about in this survey in terms
15 of the specific signals.

16 And so we list for them here each of
17 the distant signals that their system carried
18 in the year in question, by their call letters.
19 Then we identify whether each of those signals
20 was a commercial, non-commercial, or Canadian
21 signal.

22 We indicate the affiliation of the
23 system, whether it was a network, independent,
24 or educational station. And we provide to them
25 information on the city of license from which

1 that signal originated.

2 Q. And then moving down to Question 2b,
3 if you could please explain this question and
4 its purpose.

5 A. And so this question is now, based on
6 that station information, we ask them how
7 important to offer to their subscribers certain
8 categories of programming that appeared on
9 those stations were.

10 And, of course, in this version H
11 example, we have all seven categories. And as
12 I mentioned, we can sometimes have as few as
13 four categories. More typically, there are
14 five or six.

15 And those are the categories you see
16 listed there. Another important point just to
17 note is you see the start designation on the
18 left-hand side. We rotate the order in which
19 we read those categories to make sure that we
20 don't have any ordering bias.

21 And then I didn't explain the way the
22 question works.

23 Q. Yeah.

24 A. So this is -- this is a rank order
25 question. And we ask the respondents just to

1 rank from 1 to however many options there are
2 in terms of importance, with 1 being the most
3 important, these various categories.

4 Q. And if you could flip just for a
5 second to page 51 of your report, the Table
6 IV-8 reporting, for us, what the responses were
7 to that question?

8 A. Yes. So this shows, as I indicated, a
9 1 would be the most important ranking, so here
10 a low value is a good thing. And what we can
11 see here, for example, is that the average rank
12 given to the live team sports category was 1
13 and a half across essentially all four years.

14 And that really reflects the fact that
15 virtually every respondent ranked live
16 professional and college team sports either
17 first or second most important to offer. And
18 then you can see the -- the average rankings of
19 the other categories, news and public affairs,
20 movies, and syndicated all being around an
21 average rank of 3, and then PBS 4 to 5, and the
22 other two categories a little lower.

23 Q. Okay. Going back to the
24 questionnaire, and if you could go to page
25 B-19. Now we're on Question 3, and if you

1 .could explain this question and its purpose in
2 this survey.

3 A. Yes. So, again, this is the second
4 warm-up question. We're trying to get the
5 respondents here, in both the importance
6 question and this relative cost question, to
7 start thinking about factors that -- that
8 influence relative value.

9 And so we ask them to, again, rank
10 order these categories in terms of the
11 programming that appeared on the distant
12 signals we're interested in, in terms of what
13 they believe the relative cost to acquire that
14 programming would be among those categories.

15 Q. Then moving on, page B-20, Question
16 4a, and if you could explain this one for us.

17 A. Well, this is the constant sum
18 question. And so we begin here by introducing
19 that we are asking them to estimate the
20 relative value to their cable system of each
21 category of programming. We then remind them
22 about the distant signals we're interested in
23 for the second time, listing the call letters
24 again for each of the signals that are carried.

25 And then we go through the constant

1 sum allocation process to ask them to allocate
2 a fixed percentage that adds up to 100 percent
3 to each of the categories at issue.

4 JUDGE BARNETT: Just -- I just want to
5 clarify. This is all done orally?

6 THE WITNESS: Yes, it is, by
7 telephone.

8 JUDGE BARNETT: Thank you.

9 THE WITNESS: Well, there's another
10 version of the questionnaire, and we'll get
11 into that, that has a written component to it,
12 but there is an oral conversation that takes
13 place in that one as well.

14 JUDGE BARNETT: Thank you.

15 BY MR. LAANE:

16 Q. Well, we'll turn to that one probably
17 right after this question, but this is Question
18 4a. Was there a 4b?

19 A. Yes, actually 4b reads the responses
20 back to the respondent and gives them an
21 opportunity to reconsider their allocations, if
22 they see fit.

23 And that -- that certainly happens.
24 And we think it's important to give them a
25 chance to kind of rethink through what they

1 came up with.

2 JUDGE STRICKLER: Excuse me, counsel.

3 Good morning, Mr. Trautman.

4 THE WITNESS: Yes.

5 JUDGE STRICKLER: Question for you.

6 What -- when the respondents are
7 answering and they're giving their percentages,
8 and then you give them as you say an
9 opportunity to go back and consider, do they
10 always get to 100 percent exactly or do they
11 sometimes, when they're done, realize they only
12 got to 89 percent or 112 percent and then they
13 have to reformulate?

14 THE WITNESS: That certainly does
15 happen. I mean, it's -- it's usually not
16 89 percent; it's usually, I would say, 95 or
17 105 would be the most common instance where
18 that happens.

19 But we are asking them to first write
20 down their estimates before they even give them
21 to us. So, generally speaking, you're getting
22 100 percent right away, but there are instances
23 where, you know, the math didn't -- didn't add
24 up, and so they need to make a correction for
25 that.

1 JUDGE STRICKLER: Thank you.

2 JUDGE FEDER: Excuse me. Can we just
3 go back two slides?

4 THE WITNESS: Sure.

5 JUDGE FEDER: This was the -- yeah,
6 this table. I seem to recall you saying that
7 the -- you ran through the rankings and then
8 you made a remark like the last two were even
9 lower. That would be Canadian and devotional,
10 although I'm -- as I look at this, Canadian is
11 ranked in each year higher than PBS. Is that
12 correct?

13 THE WITNESS: Well, I'm sorry. I'm
14 referring to -- because lower is better --

15 JUDGE FEDER: I see.

16 THE WITNESS: -- I was referring to
17 ranked lower in terms of the outcome as opposed
18 to the specific -- the actual number.

19 JUDGE FEDER: Right.

20 THE WITNESS: So, yes, you're correct
21 that Canadian signals typically ranked the --

22 JUDGE FEDER: The number is higher --

23 THE WITNESS: -- the lowest in terms
24 of importance, and therefore their number was
25 between 6 and 7.

1 JUDGE FEDER: Okay. I just wanted to
2 clarify that.

3 THE WITNESS: And you see that that
4 was slightly different in 2013, but yes.

5 BY MR. LAANE:

6 Q. So 1 means the most important?

7 A. Yes.

8 Q. All right. Now, earlier you said that
9 there was a different version of the
10 questionnaire for systems that carried WGN
11 America as their only distant signal; is that
12 right?

13 A. That's correct.

14 Q. Okay. And I want to go over that
15 WGN-only survey quickly in a second here, but
16 first could you just tell us what WGN America
17 and -- is that often called WGNA for short?

18 A. Yes, it is often referred to as WGNA.

19 Q. Okay. If you could just tell us what
20 WGNA is or was and what its role was in the
21 distant signal marketplace in 2010 through '13?

22 A. Well, WGNA, I guess, was what used to
23 be referred to as a superstation and is,
24 therefore, among the distant signals, far more
25 widely distributed and available to -- to many

1 more subscribers than any other distant signal.

2 And, therefore, it is distinct in that
3 regard.

4 Q. And if you could turn to page 26 of
5 your report.

6 And, Jeff, if you could please put up
7 Figure III-1.

8 What does this graph reflect?

9 A. This graph just kind of illustrates
10 that point, that there were between 53 and 57
11 million cable subscribers that received one or
12 more distant signals during this 2010 to '13
13 period. And that's the four bars to the very
14 left of the chart.

15 As you can see, 41 million or more of
16 those received WGN on a distant basis during
17 each of those years. And then what we're
18 showing next to that is the next four most
19 wildly available distant signals. And those
20 four, none of them were available to more than,
21 I think the highest in any year was 1.2 million
22 subscribers.

23 So there's about a 40-to-1 difference
24 between WGN and any other individual distant
25 signal.

1 JUDGE STRICKLER: Just to be clear,
2 when this table, figure shows WGN, that's WGN,
3 not WGNA?

4 THE WITNESS: No, that is WGN America,
5 which is the -- the distant signal that is
6 received by subscribers in this proceeding.

7 JUDGE STRICKLER: Which is different,
8 of course, than WGN?

9 THE WITNESS: Than WGN Chicago, yes.

10 JUDGE STRICKLER: Okay. So the --

11 THE WITNESS: I'll try to -- I'm
12 almost always going to be talking about WGNA or
13 WGN America when I refer to it, but if I'm for
14 any reason talking about the local signal, the
15 local version of the signal, I'll try to refer
16 to it as WGN Chicago.

17 JUDGE STRICKLER: So whenever we see
18 in your testimony or your report WGN, unless
19 you specify otherwise, that refers to WGNA?

20 THE WITNESS: That would be correct.

21 JUDGE STRICKLER: Thank you.

22 BY MR. LAANE:

23 Q. And why did you use a different
24 version of the questionnaire for systems that
25 carried WGNA as their only distant signal?

1 A. Well, in the Judges' order following
2 the '04-'05 proceeding, and certainly we became
3 aware of this during the proceeding, that there
4 was -- and had known about it, I suppose, but
5 that there was a substantial amount of
6 non-compensable programming on WGN and that it
7 wasn't evenly distributed in terms of
8 non-compensable programming among the various
9 categories.

10 And the Judges acknowledged that issue
11 and expressed concern about it in their '04-'05
12 decision. And we had previously thought about
13 if there was something that we could do to
14 address that. And in the 2010 to 2013 surveys,
15 we came up with a methodology to -- to try to
16 address that, at least for the systems that
17 only carried WGN.

18 Q. And what impact were the Judges
19 concerned about that from that disparity you
20 mentioned?

21 A. Well, they felt that it advantaged the
22 Program Suppliers and Devotional categories and
23 that it disadvantaged the JSC and CTV
24 categories.

25 Q. Okay. And if you could turn to page

1 29 of your report, Figure III-4.

2 A. Yes.

3 Q. What is this graph showing us?

4 A. Well, this shows the compensable
5 proportion of programming that appeared on WGN
6 America in 2010 to '13. So what you see is
7 that 100 percent of the JSC and CTV programming
8 that appeared on WGN America was compensable.

9 Only about 10 percent or less of the
10 devotional programming that appeared on WGN
11 America was compensable, and as little as
12 2 percent of the Program Suppliers' programming
13 was compensable in those years.

14 Q. Okay. Let's take a quick look now at
15 the WGN-only questionnaire. And, you know, in
16 particular, if you could just flag to us the
17 extent to which it's -- it's different from the
18 survey we already looked at.

19 So here we have Question 1.

20 A. Yes. And there is really nothing
21 different here except for the fact that we
22 identify that we're looking for the person most
23 responsible for the decision to carry WGN
24 America in Question 1. And then they still
25 have to affirmatively answer that they were the

1 most responsible there.

2 Q. Okay. And then going to Question 2.

3 A. And here is where we introduce the
4 change that we made. And so we indicate to the
5 respondent that it is WGN America that we're
6 interested in, but we also explain to them that
7 we're not interested in all of the programming
8 on WGN America.

9 And so we then provide them, through
10 either e-mail or fax, with a programming
11 summary that details or summarizes, I'll say,
12 the compensable programming on WGN America in
13 the particular year.

14 And then we go on to ask the
15 importance question in the rank order format
16 based on that programming summary.

17 Q. Okay. And, Jeff, if you could just go
18 to the slide from page C-20 of the report.

19 Is this an example of those summaries
20 you were referring to, Mr. Trautman?

21 A. It is. It's the 2013 programming
22 summary. And you can see that it identifies
23 the categories, it identifies programming
24 contained within those categories, and provides
25 other information to assist the respondent.

1 And this was something that, at the
2 time they're responding to the survey, they had
3 in their physical possession.

4 Q. Now, you said this was for WGNA-only
5 systems. What if a system carried WGNA and
6 also other distant signals, would they get the
7 programming summary?

8 A. Well, unfortunately not. We -- we
9 thought about whether we could do that or not,
10 and we were concerned that, first of all, it
11 would place -- could cause a little bit of
12 confusion because we were doing -- handling WGN
13 one way and other signals another way.

14 But we were also concerned that it
15 might place undue importance on WGN as compared
16 with the other signals that we were asking
17 about by -- by providing that additional
18 detail. So we decided against making the
19 change for the other systems, but we still
20 thought that this would partially address the
21 compensability issue and also give us some
22 guidance as to its potential magnitude.

23 JUDGE STRICKLER: When you started
24 your answer, the first word you used was
25 "unfortunately." Why was it unfortunate that

1 you couldn't give this type of survey to those
2 others respondents?

3 THE WITNESS: Well, we would have
4 liked to have fully addressed the
5 compensability issue by dealing with it in all
6 cases where WGN was carried.

7 JUDGE STRICKLER: So does that mean
8 that you did not fully address the
9 compensability issue?

10 THE WITNESS: I don't believe we did,
11 no. We addressed it with the WGN-only systems,
12 and I think it is pretty much fully addressed
13 with those systems or is fully addressed with
14 those systems, but with the systems that --
15 which are quite a lot of systems that carry WGN
16 and other distant signals, the methodology is
17 the same as it has been in the past in terms of
18 their considering WGN as a whole as opposed to
19 just solely the compensable programming on WGN.

20 JUDGE STRICKLER: How, if at all, do
21 you think it affected the reliability or
22 accuracy of your survey that you weren't able
23 to send this type of summary to those other --
24 other respondents?

25 THE WITNESS: Well, I don't think it

1 really affects the reliability of the survey,
2 but I think that certainly -- and I'll actually
3 address this in a minute -- but some adjustment
4 still, additional adjustment, could be
5 considered in terms of the idea that because
6 that -- a portion of that compensability issue
7 still remains, the survey findings might still
8 be a floor for JSC and CTV and a ceiling for
9 the Program Suppliers and the Devotional
10 Claimants.

11 JUDGE STRICKLER: Thank you.

12 BY MR. LAANE:

13 Q. About what percentage of respondents
14 received the WGNA program summary?

15 A. It was approximately -- over the four
16 years, it was approximately 30 percent.

17 Q. If we could move on to Question 3 at
18 page C-18, how does this compare to the survey
19 we looked at earlier for Question 3?

20 A. Well, again, it's the same question
21 from the other survey, just considering the WGN
22 America programming included in the programming
23 summary. And, of course, you see here that we
24 only have the five categories because those are
25 the categories that are on WGN America.

1 Q. Okay. So here again they're referred
2 to the programming summary?

3 A. Yes, absolutely.

4 Q. Okay. Moving on to Question 4,
5 please.

6 A. And the same thing here. It's the
7 same constant sum question, but, again,
8 referring them to the programming summary in
9 terms of allocating their -- or making their
10 relative value allocation.

11 Q. Now, before implementing these new
12 survey procedures for WGNA-only systems, did
13 you do anything to test them?

14 A. Yes. We -- in 2009 we conducted a
15 pilot survey of this WGN America-specific
16 questionnaire to make sure that it was
17 something that respondents could understand and
18 would be willing to participate, receive
19 something via e-mail or fax, and go ahead and
20 be a part of.

21 So we did test that.

22 Q. And do you have an opinion on whether
23 use of the WGNA-only questionnaire improved the
24 Bortz survey?

25 A. I think it was a very important

1 improvement, yes, and I think it did improve
2 the survey. To the point made earlier, there
3 still could be some further adjustment
4 associated with that issue, but it's certainly
5 a step in the right direction.

6 Q. Switching documents on you for a
7 second here, if you could go to your rebuttal
8 testimony, Exhibit 1002, and I wanted to ask
9 you about Table 3 at page 12.

10 Could you explain these data for us,
11 please?

12 A. Yes. So this shows -- of course, we
13 had WGN-only systems in the prior surveys, as
14 well as in the 2010 to '13 surveys, and in
15 2004-'05, we asked them about WGN America as
16 if -- without giving them the information on
17 compensable programming.

18 So we, in this table, are comparing
19 the results that we got from those respondents
20 back in '04-'05, when the compensability issue
21 had not been addressed, to the results we got
22 among those systems when we did address the
23 compensability issue.

24 And what you see here is, frankly,
25 exactly what I think you would have expected to

1 see, that the values attributed to live team
2 sports and news go up pretty substantially and
3 there is a drop in values accorded to the
4 syndicated movies and devotional categories.

5 Q. Okay. Let's, if we could go back,
6 please, Jeff, to Table I-1, your overall
7 results here, Mr. Trautman.

8 In your opinion can the Judges use the
9 results shown in Table I-1 directly to allocate
10 shares to the various agreed categories of
11 programming?

12 A. Well, I think in my opinion these --
13 these results are the best basis for allocation
14 that are available. I certainly acknowledge
15 the compensability issue, that it has not been
16 fully addressed and there could be some
17 adjustment considered for that issue.

18 And then there is another issue which
19 is certainly -- is addressed in both -- in my
20 direct testimony. We do not survey systems
21 that carry only Public Television or only
22 Canadian signals. We don't feel that that
23 really works in a constant sum context and when
24 there's only a single category and really
25 nothing to make an allocation among.

1 And so there does also need to be an
2 adjustment to account for that.

3 Q. Did you take a look at what the
4 results would be using the same type of
5 PTV-only and Canadian-only adjustments used in
6 the 2004 through '05 determination?

7 A. I did. That's on Table 10 of my
8 rebuttal testimony.

9 Q. Okay.

10 A. Okay. And you can see here that it
11 results in naturally an increase in the PTV
12 allocation, as well as an increase in the
13 Canadian allocation. And then the methodology
14 then proportionately decreases the shares to
15 each of the other claimant groups based on
16 their original allocation.

17 Q. Okay. And on the topic of PTV, I
18 wanted to ask you about a statement in the
19 rebuttal testimony from Ms. McLaughlin,
20 Dr. Blackburn saying that PTV systems were
21 under-represented in the Bortz survey.

22 Did you see that testimony?

23 A. I did see that testimony.

24 Q. Okay. And do you have an opinion on
25 that?

1 A. That's not correct. I have looked at
2 the royalty representation of systems that
3 carry PTV signals among our respondents, and I
4 believe there's a table -- is it Table A-5?

5 Q. Jeff, could you put up Table A-5,
6 please.

7 A. Table A-5 shows that comparison. And
8 you can see that there is some fluctuation from
9 year to year, but across the four-year period,
10 our weighted results are based on a carriage of
11 Public Television signals among systems that
12 account for 59 percent -- 59.3 percent of
13 royalties. And that compares to the universe
14 projection of 59.8 percent.

15 So very, very close.

16 Q. Going back to Dr. Frankel for a
17 minute, did you look at his revised estimates
18 for the Bortz results in his amended written
19 rebuttal testimony?

20 A. Yes, I did.

21 Q. And did you see any issues with those?

22 A. Well, I haven't had an opportunity to
23 review the underlying data behind the tables
24 that Dr. Frankel prepared, but just looking at
25 those tables, which purport to account in some

1 fashion for the PTV-only and Canadian-only
2 issue, the -- I can -- I can conclude really
3 that there has to be some sort of calculation
4 error in what was produced because the
5 magnitude of the changes for those two
6 categories as a result of accounting for that
7 issue are well beyond the total royalties in
8 the entire universe that are attributable to
9 those types of signals.

10 JUDGE STRICKLER: You said you didn't
11 look behind -- look at the data itself to see,
12 so you have assumed there's an error. Did you
13 have the data available to see if there was
14 some sort of a computational error?

15 THE WITNESS: Well, that was received
16 very recently. And there were some issues --
17 programs weren't provided, things of that
18 nature. So I -- it was available, but I have
19 not had the opportunity to review it.

20 I'm -- I'm just responding based on
21 what I see in the end result, that it's sort
22 of -- I guess I would express it as kind of a
23 mathematical impossibility, the magnitude of
24 the change.

25 And it's because if you -- the

1 McLaughlin augmentation essentially gives full
2 royalty weight to the PTV-only and
3 Canadian-only signals. In other words, it --
4 it's sort of an indirect method, but it
5 accounts for the entire royalties that are paid
6 by those signals or are accounted for by those
7 signals. And it's then added to the Bortz
8 result for those categories.

9 JUDGE STRICKLER: So it's the
10 inconsistency of the two results that leads you
11 to believe that --

12 THE WITNESS: That there's an error,
13 yes.

14 JUDGE STRICKLER: -- criticisms must
15 be based on an error?

16 THE WITNESS: Yes. And that for you
17 to get a greater result than what McLaughlin
18 calculates is essentially impossible, because
19 she's counting for 100 percent of the royalties
20 attributable to those signals.

21 JUDGE STRICKLER: Now, the data --

22 THE WITNESS: Or systems.

23 JUDGE STRICKLER: The data that you
24 said came relatively recently, you didn't have
25 a chance to analyze, when did you receive it?

1 THE WITNESS: I'm not sure of the
2 date, but a couple days ago.

3 MR. LAANE: Some of it came in Monday
4 night with the amended written rebuttal
5 testimony, but it was then missing some of the
6 necessary input files, which I believe were
7 received Tuesday night, Tuesday evening.

8 JUDGE STRICKLER: Of this week?

9 MR. LAANE: Yes, Your Honor.

10 JUDGE STRICKLER: Thank you.

11 BY MR. LAANE:

12 Q. Mr. Trautman, shifting gears a little
13 bit here, have you reviewed the survey
14 submitted by Howard Horowitz in this matter?

15 A. Yes, I have.

16 Q. And how does the methodology of the
17 Horowitz survey compare with the methodology of
18 the Bortz survey?

19 A. Well, Mr. Horowitz expresses that they
20 started with an effort to mirror the '04-'05
21 Bortz methodology so there are certainly some
22 similarities between the two surveys, but
23 Mr. Horowitz also made -- well, did not make
24 the improvements that Bortz made from '04-'05
25 to 2010 to '13 and, in addition, made some

1 changes to his methodology that I think
2 essentially destroy the reliability of that
3 survey.

4 Q. And did you help us prepare a slide
5 summarizing the key differences between the two
6 surveys?

7 A. Yes, I did.

8 MR. LAANE: Jeff, could you put that
9 up, please.

10 JUDGE STRICKLER: Is this just a
11 demonstrative?

12 MR. LAANE: Yes, Your Honor.

13 BY MR. LAANE:

14 Q. If you could please explain the first
15 bullet for us, Horowitz' addition of an "other
16 sports" category.

17 A. Yes. So as -- as we've been talking
18 about here, there is a maximum of seven
19 categories in the Bortz survey and, of course,
20 that varies depending on which systems carry
21 which signals from system to system, but
22 Horowitz added an eighth category called "other
23 sports" to his survey. And that was really a
24 completely unjustified addition.

25 I'm certainly aware -- it's a big part

1 of my business -- that, you know, there is
2 other sports in the broader cable and
3 television marketplace that is -- is of
4 importance. Some of my clients -- a current
5 client is the PGA Tour, and I've -- I have
6 worked with NASCAR in the past, so -- so I have
7 got a number of clients that might constitute
8 other sports, but in the distant signal
9 marketplace, other sports is really pretty much
10 nonexistent. And so there's just no basis for
11 establishing a category associated with it.

12 And there was a particular problem in
13 the way Horowitz executed the addition of this
14 category, in that in the cases of approximately
15 half, 45 percent, of his respondents carried
16 WGN America as their only distant -- their only
17 commercial distant signal.

18 And on that distant signal there was,
19 I believe, in one year, one-half hour of other
20 sports programming the entire year and ranging
21 from one to two hours of other sports
22 programming in -- in the other three years.

23 And clearly in my mind that wasn't
24 something that would justify the addition of
25 another category to the survey.

1 JUDGE STRICKLER: Wouldn't the survey
2 respondents, know, though, what sort of sports
3 they showed, whether they fit within the
4 original team sports category or in some other
5 one, given that they are the ones who already
6 declared they were knowledgeable about the
7 stations that they retransmitted? So why would
8 they be misled if they are the ones with the
9 knowledge sufficient to answer the questions in
10 the first place?

11 THE WITNESS: Well, we'll actually
12 talk about that when we look into the -- into
13 the next issue with Horowitz, because I think
14 that the design of the Horowitz survey
15 categories was -- particularly with respect to
16 other sports, but certainly with other
17 categories as well, was intentionally
18 misleading and really sort of attempted to
19 elicit an incorrect response.

20 JUDGE STRICKLER: My question -- I
21 appreciate your answer. My question wasn't
22 whether or not the questions were intended to
23 mislead but whether or not you believed the
24 respondents were capable of being misled, given
25 they were the ones with knowledge of their own

1 programming.

2 THE WITNESS: Sure. Well, I do think
3 that they are knowledgeable respondents and
4 they have knowledge of their own programming,
5 but I think that when -- in my experience, and
6 this goes back to some terms I've referred to
7 in prior proceedings, sort of dominant
8 impression and signature programming.

9 And those things are related. And I
10 believe that respondents in these surveys are
11 responding to -- based on their dominant
12 impression of the different programming types
13 that are on the signals that they're being
14 asked about, and that that centers on signature
15 programming that is carried on those signals
16 within each of the categories.

17 And when I refer to signature
18 programming, I'm talking about what, in my
19 experience, is the programming that drives
20 value in the cable programming marketplace.
21 So, for example, I think it's useful to think
22 about, let's say, a cable network.

23 So when we're thinking about maybe the
24 AMC network, something like The Walking Dead
25 series would be a signature -- an example of a

1 signature program that would drive a
2 significant part of AMC's value.

3 And that's not necessarily the only
4 signature program on AMC, but it's a
5 particularly notable one and would be the kind
6 of thing that drives, from the cable operator's
7 perspective, their willingness to carry that
8 network and the value that they attribute to it
9 in terms of their willingness to pay a license
10 fee for it.

11 Similarly, with a network like ESPN,
12 the signature programming would, in my view,
13 consist of the live team sports programming
14 like the NFL telecast, the Major League
15 Baseball telecast, the NBA telecast, and so
16 that would comprise the signature programming
17 on the ESPN Network and would drive the
18 willingness to pay the license fees that ESPN
19 charges.

20 And so I think that the responses in
21 this survey aren't based on, you know, a
22 precise quantification of every program that
23 exists within every category. That's a little
24 different with the WGN-only one since we're
25 giving them that programming summary.

1 But, in general, that's not what we're
2 trying to accomplish here. We're trying to get
3 a response based on a dominant impression and
4 recognizing that signature programming is what
5 drives value in the cable programming
6 marketplace.

7 JUDGE STRICKLER: And because you're
8 concerned about or trying to elicit a dominant
9 impression, a misleading question you think
10 could lead a respondent astray?

11 THE WITNESS: I think so. So we'll
12 talk about some of these specific examples in a
13 minute and just the ways in which I think that
14 that could happen.

15 JUDGE STRICKLER: Thank you.

16 BY MR. LAANE:

17 Q. And, Mr. Trautman, could you tell us
18 first as a general matter of survey research,
19 what are some of the problems that can arise
20 through the use of examples?

21 A. Well, I think to begin with, just --
22 just even if they are done perfectly, I think
23 examples are problematic and not really a good
24 idea to use, particularly in a survey of this
25 type where you're looking for relative value,

1 because there's just a tendency among
2 respondents to -- they have no doubt listened
3 to what you've asked them to do throughout the
4 survey. And we, of course, expect that they do
5 that. But then when you introduce examples,
6 all of a sudden now they're thinking about
7 those examples.

8 And we find that there's -- or it's my
9 experience that there's a tendency to respond
10 based on the examples, rather than based on
11 sort of what they have otherwise been
12 instructed to do.

13 And so if the examples are perfectly
14 representative, you know, of the overall
15 category, then maybe that's not a problem, but
16 I think it still could create some issues. But
17 certainly then when you have problematic
18 examples, you can tend to get respondents
19 either confused, either wondering, well, I
20 thought they were asking about this, but now
21 maybe they're asking about this, and maybe
22 they're -- maybe they're really not concerned
23 with these signals that I thought they were,
24 because I know that this isn't on those
25 signals. There's all kinds of things that can

1 happen.

2 Or they are responding based on the
3 examples and not based on the -- the totality
4 of the programming or what they -- the opinion
5 that they had originally formed.

6 Q. Okay. So it sounds like at least part
7 of what you're saying is they could be misled
8 by an example that's inaccurate or they could
9 know that the example is inaccurate but it
10 might confuse them about what the question is
11 asking them to consider?

12 A. Yes, that was certainly what I was
13 attempting to express, yes.

14 Q. Okay. And we'll look at some specific
15 ones in just a second, but just generally, what
16 were some of the types of problems with the
17 examples in the Horowitz survey?

18 A. Well, there were a lot of them. A
19 number of the examples were not carried by the
20 distant signals that a respondent was being
21 asked about. So they were not on those
22 signals.

23 Some of the examples were placed in
24 the wrong category, which certainly would have
25 been confusing and misleading. And other

1 examples were of non-compensable programming or
2 programming that was only carried on a
3 non-compensable basis.

4 And, finally, there were examples that
5 might have led a respondent to believe that
6 there was a lot of something or at least quite
7 a bit of something when, in fact, there was
8 almost none of it.

9 JUDGE STRICKLER: So you just gave us
10 examples of misuses of examples?

11 (Laughter.)

12 THE WITNESS: Yes, but all of those
13 exist in Horowitz survey.

14 BY MR. LAANE:

15 Q. All right. Let's take a look at the
16 2013 Horowitz survey form for WGN-only systems.

17 And, Jeff, if you could bring up slide
18 24.

19 Is this the example that was given for
20 other sports on WGN-only systems?

21 A. Yes. So as I indicated, there was
22 only one horse race lasting one hour that
23 appeared on WGN America in that year. And so,
24 in my view, referring to that as an example is
25 misleading because it suggests that there was

1 something other than horse racing as well on
2 WGN America.

3 And, in addition to that, it suggests
4 that there was more than just one horse race.
5 It suggests that horse racing was sort of a
6 regular feature of WGN.

7 And, again, I understand we're talking
8 about knowledgeable respondents, but this is
9 not, you know, the most valuable programming, I
10 would say, on WGN in any case, and so certainly
11 this could be in the area where a respondent
12 would think to themselves: Well, maybe there
13 is something I'm missing here. Maybe I'm not
14 aware of other programming that might be on WGN
15 that I didn't realize was on there.

16 JUDGE STRICKLER: Counsel, looking on
17 the screen, where is that on these documents,
18 rebuttal statement?

19 MR. LAANE: It's discussed in the
20 rebuttal statement, Your Honor, yes.

21 JUDGE STRICKLER: But this is just a
22 demonstrative?

23 MR. LAANE: This is just a
24 demonstrative.

25 JUDGE STRICKLER: It's not a

1 reproduction?

2 MR. LAANE: Well, it is a reproduction
3 from -- from the surveys that were produced as
4 part of Mr. Horowitz's underlying documents and
5 reviewed by Mr. Trautman.

6 JUDGE STRICKLER: So it's somewhere in
7 Mr. Horowitz's documents, not in
8 Mr. Trautman's?

9 MR. LAANE: This specific question and
10 example is discussed in his report, but --

11 JUDGE STRICKLER: I just wanted to
12 stick a tab on the paper version if you have a
13 page for me. That's all I was asking. Yeah, I
14 guess the answer is no, there is no page; I'll
15 find it in Horowitz?

16 MR. LAANE: Or I can -- I can give you
17 a copy of the whole survey from production if
18 you would like.

19 JUDGE STRICKLER: Okay.

20 BY MR. LAANE:

21 Q. Mr. Trautman, you also mentioned that
22 sometimes there was an issue as to which
23 programming category was the owner of the
24 programming. Was that an issue with the horse
25 race on WGNA?

1 A. Yes. So the Horowitz survey
2 attributes the other sports category to program
3 suppliers in referring to its results, but
4 actually horse racing as it appeared here was a
5 CTV program.

6 And so this is -- there was actually
7 no compensable program suppliers, other sports
8 programming on WGN America in 2013 or in 2012
9 or 2011 for that matter.

10 Q. Now, in the Horowitz survey, if a
11 system's only distant signals were WGNA plus a
12 Public Television signal, would that system get
13 the WGN-only questionnaire we just looked at or
14 would it get a different survey in the Horowitz
15 survey?

16 A. No, it received what Horowitz referred
17 to as their non-network questionnaire.

18 Q. And, Jeff, if we could go to slide 25.

19 Is this the other sports example used
20 in that non-network questionnaire that would go
21 to systems that carried only WGN plus a Public
22 Television station?

23 A. Yes, it is. And again just to be
24 clear, so in these cases, the respondents
25 carried only WGN America as their only

1 commercial distant signal. And the examples
2 here, NASCAR auto races, were not -- have never
3 been carried on WGN America, but were not in
4 2010 to 2013.

5 Professional wrestling was not carried
6 on WGN America in 2013. Figure skating
7 broadcasts were not carried on WGN America in
8 any of the four years from 2010 to 2013.

9 So, again, very misleading examples
10 suggesting that something was there that wasn't
11 and at the very least potentially confusing
12 respondents as to what they are being asked
13 about.

14 Q. Going back to the 2013 Horowitz
15 WGN-only questionnaire, I would like to focus
16 in now on the syndicated programming question.

17 Do these examples present any issues?

18 A. Well, here I think really the
19 programming description, as well as the
20 examples, both present problems. Syndicated
21 series -- I think it's important to understand
22 that in terms of compensable programming on WGN
23 America, there were no compensable children's
24 shows, no compensable talk shows, no
25 compensable reality shows, or no compensable

1 game shows on WGN America in 2013.

2 And then when you get to the examples,
3 you have -- 30 Rock was actually on WGN America
4 in 2013, but only about a quarter of the 30
5 Rock episodes that aired on the station were
6 compensable. The other three-quarters were not
7 compensable.

8 Then two of the other examples,
9 Adelante Chicago and People to People, are
10 local Chicago public affairs programs that
11 belong in the CTV category, not in the
12 syndicated category. And finally Everybody
13 Loves Raymond, a sitcom, was not on WGN America
14 at all during 2013.

15 Q. Let's take a quick look now at the
16 movies example in the 2013 Horowitz WGN-only
17 questionnaire. Any issue with these examples?

18 A. Yes. Again -- well, there's -- again
19 in the program description there's an issue, in
20 my mind, related to specials being included as
21 part of movies. I don't necessarily associate
22 specials with movies, but in terms of the
23 examples, so in 2013 there were only four
24 compensable movies that appeared on WGN
25 America.

1 And these three that are listed, none
2 of the four were these three. These three did
3 not appear at all, even on a non-compensable
4 basis in that year on WGN America.

5 And I think it's important to note
6 that two of these three movies won the Academy
7 Award for best picture. One, the third one,
8 Home Alone 2, is among the top box office
9 grossing movies of all time. And I guess
10 suffice it to say the four compensable movies
11 that appeared on WGN America in 2013, to my
12 understanding, were not Academy Award winners.

13 Q. In addition to the ones we just went
14 over, are there additional problematic examples
15 discussed at pages 18 through 28 of your
16 rebuttal testimony?

17 A. Yes, there are.

18 Q. Going back to your slide on
19 differences between the two surveys --

20 JUDGE STRICKLER: Before we leave
21 examples, were there examples that were used in
22 the Horowitz survey that you thought were --
23 were appropriate examples?

24 THE WITNESS: Well, I guess not really
25 because I don't -- I don't believe that

1 examples are a good idea in the first place.

2 JUDGE STRICKLER: You did say that
3 before, but let's not go to that particular
4 position. Even though you don't like use of
5 examples in these surveys, were any of the
6 examples defect-free, other than the fact that
7 they were examples?

8 THE WITNESS: There were certainly
9 instances where an example was used that
10 appeared on the distant signal in question and,
11 therefore, at least did not -- you know, did
12 not conflict with the sort of stated purpose of
13 the survey.

14 JUDGE STRICKLER: Do you think most of
15 the Horowitz examples were misleading or were
16 not misleading?

17 THE WITNESS: Well, I would say in the
18 case of the 45 percent of the surveys that were
19 WGN-only or WGN plus PTV, I would say that most
20 were misleading.

21 Now, he did, in the WGN-only and PTV
22 surveys, isolate -- you know, certain
23 categories were better than others, but there
24 was also a major problem that ran throughout
25 every survey, where he didn't provide any

1 examples for the news category, which is, to
2 me, a huge problem because you've got examples
3 for every other category but no examples for
4 that category. So that infected every single
5 survey.

6 But I guess where I was going with the
7 first answer -- the first part of my answer was
8 that for almost half the surveys, I think that
9 the problematic examples far outweighed the
10 more accurate examples.

11 JUDGE STRICKLER: And if we wanted to
12 sort of make a template for ourselves as to all
13 the examples that you found misleading in the
14 -- in the survey and all those that were not,
15 we would look at the -- at the examples that
16 were put in the Horowitz survey, and then we
17 would compare it to the ones that you've
18 identified as misleading, and every one that
19 you didn't -- did not identify as misleading,
20 you didn't have a problem with; is that fair?

21 THE WITNESS: Well, I wouldn't exactly
22 say it that way. I devoted ten pages of my
23 rebuttal testimony to this issue. And I have a
24 table -- tables addressing specifically the
25 movies and syndicated series categories.

1 I focused less on the other categories
2 simply because I didn't think the problems,
3 besides the news one, now we're up to three
4 categories, and of course other sports that
5 we've already talked about, so now we're up to
6 four categories -- so I've talked about all of
7 those. I didn't spend a whole lot of time on
8 the remaining categories. So in terms of
9 what's in my written rebuttal, I think there
10 were some problems with those, but it's not in
11 my rebuttal.

12 JUDGE STRICKLER: And you mentioned
13 ten pages. Are those pages 18 to 28 of your
14 written rebuttal testimony?

15 THE WITNESS: Yes.

16 JUDGE STRICKLER: Thank you.

17 JUDGE FEDER: Excuse me. Horowitz
18 says that he included these examples to get at
19 what he viewed as a flaw in the Bortz survey,
20 which is that the categories don't map on to
21 categories that are commonly used in the
22 business, they're very specific to this kind of
23 proceeding, and that the survey respondents
24 were potentially confused by that.

25 Was there anything in your pre-testing

1 of the survey that would indicate one way or
2 another whether there was any confusion over
3 these categories?

4 THE WITNESS: Well, there was
5 certainly nothing in any of the surveys we've
6 conducted for 30 years now or in the
7 pre-testing for 2009 with the WGN programming
8 summary that would indicated any confusion
9 about the categories. And it's certainly my
10 experience as well that movies is sort of
11 generally self-explanatory, but very well
12 understood in the industry. Syndicated shows,
13 series, and specials, I think there's --
14 there's a good understanding of that as well.
15 You know, live team sports, I think we've tried
16 to be explanatory with that. And devotional
17 programming, again, pretty explanatory with
18 that.

19 So I don't really think that those
20 issues exist, except, you know, maybe at the
21 very fringes of the category definitions in
22 terms of small elements of the total
23 programming mix or pie that really don't have
24 much of an influence on the results.

25 JUDGE FEDER: Your pre-testing of the

1 WGN-only survey, was it just that version of
2 the questionnaire or did you pre-test the whole
3 questionnaire in its various versions?

4 THE WITNESS: We didn't test the other
5 versions because that was really the same
6 questionnaire that we've used since
7 approximately 1992.

8 JUDGE FEDER: Thank you.

9 BY MR. LAANE:

10 Q. Going back if we could, Jeff, to the
11 slide on differences, we have here Bortz
12 identification of compensable WGN programming.

13 Can you explain that difference for
14 us?

15 A. Well, that's the issue we talked about
16 earlier, where we made an improvement from
17 '04-'05 to 2010 to '13 by identifying the
18 compensable programming for respondents that
19 carried only WGN America.

20 Horowitz did not do that. There was
21 an instruction in there to not consider
22 programming that had been substituted and
23 blacked-out -- substituted for blacked-out
24 programming, but in my mind, that was a
25 meaningless instruction because respondents,

1 even though they're knowledgeable about
2 programming, they don't have any reason to
3 think about or look at the differences between
4 WGN Chicago and WGN America.

5 Q. So, well, how did you determine what
6 programming was compensable and non-compensable
7 on WGNA?

8 A. We obtained from TMS, or now
9 Gracenote, the -- actually in 2010, we got the
10 data from Nielsen, but we obtained essentially
11 the daily programming schedules, 24 hours a day
12 for 365 days a year for WGN America and WGN
13 Chicago, and we lined those up against each
14 other and identified the programming that was
15 carried simultaneously and identified that as
16 the compensable programming.

17 Q. Moving on to the next bullet in your
18 slide of comparisons, you say "Bortz
19 improvements to warm-up questions."

20 What does that refer to?

21 JUDGE BARNETT: Before we move on to
22 another bullet point, why don't we take our
23 morning recess. We'll be at recess for 15
24 minutes.

25 (A recess was taken at 10:37áa.m.,

1 after which the trial resumed at 10:59 a.m.)

2 JUDGE BARNETT: Please be seated. In
3 an abundance of caution, I will indicate that
4 yesterday I said a whole range of exhibits were
5 admitted. There is no Exhibit 1012.

6 MR. LAANE: That's correct, Your
7 Honor.

8 JUDGE BARNETT: So it is not admitted
9 because it doesn't exist.

10 Secondly, the temperature in the room,
11 please keep us advised. When it is cool enough
12 in here, it seems to be like a meat locker in
13 that little room over there, and when it is
14 pleasant there, it is like a steam bath here.

15 So let us know. We are always
16 adjusting from coming out of that place there
17 where it is irrational.

18 Mr. Laane?

19 MR. LAANE: Thank you, Your Honor.

20 BY MR. LAANE:

21 Q. Jeff, if you could bring back up slide
22 30, please, and the next one we were about to
23 turn to, Mr. Trautman?

24 JUDGE STRICKLER: Are you going to do
25 the warm-up questions now?

1 MR. LAANE: Yes, I need to warm up for
2 my questions.

3 JUDGE STRICKLER: What a segue.

4 (Laughter.)

5 BY MR. LAANE:

6 Q. What does that refer to?

7 A. Well, we talked a bit about those
8 warm-up questions. And really there we just
9 made a change in terms of in '04-'05 we had a
10 question about the use of distant signals in
11 advertising and promotion, but we eliminated
12 that question because we had found by that
13 point that essentially no cable system
14 operators were reporting using distant signals
15 in their advertising and promotional efforts.

16 So, you know, it was kind of a
17 throw-away question, so to speak. And then so
18 we modified to try to focus the respondents
19 more closely on relative value related issues.
20 So we made the -- we addressed importance and
21 relative cost. And so that is -- those were
22 the improvements.

23 And Horowitz did a little different
24 approach than what was used in the '04-'05
25 Bortz survey, but there was still an

1 advertising question in there and so it was a
2 bit different.

3 And then, finally, there is the issue
4 related to the signal limitation that we put
5 into place in the 2010 to 2013 surveys in
6 response to some questions that the Judges had
7 brought up in '04-'05 related to some cable
8 systems offering very large numbers of distant
9 signals.

10 Q. Now, before we get to the eight-signal
11 limit, just going back to the warm-up
12 questions, did you see Dr. Steckel's rebuttal
13 testimony where he is of the opinion that the
14 warm-up questions, in his words, attempt to
15 elicit the same information as the final
16 allocation question?

17 A. Yes. And I -- I disagree with that.
18 I think he was focused specifically on Question
19 3 related to expense. And I think that you
20 need -- my view is the warm-up questions need
21 to be considered together in context in terms
22 of they're each making a contribution toward
23 what the respondent is considering.

24 And so I don't think that that's
25 appropriate. And I think, even if it was --

1 and I think Mr. Horowitz actually agreed with
2 me on this -- that I don't think Question 3 is
3 asking the same thing as Question 4 in any
4 case.

5 Q. All right. You may have at least
6 partially answered it, but did you see Dr.
7 Steckel argued in his rebuttal testimony that
8 there should be a perfect 1.0 correlation
9 between the responses to Question 3 and
10 Question 4?

11 A. Yes. And I disagree with that. I --
12 I also note that if you look at Dr. Steckel's
13 underlying data, you will find that the
14 correlation -- he translated both into rank
15 order. The correlation was on the order of
16 90 percent in each year. So very high
17 correlation.

18 And, in addition to that, I think
19 because of the methodology he used it was
20 impossible to have a one-to-one correlation
21 from many systems because in the constant sum
22 question, ties occur, which is quite natural
23 when you are allocating percentages, and he
24 assigned a category .5.

25 So a 1.5 or a -- if categories were

1 tied for first, they each got a 1.5. So that
2 couldn't correlate perfectly with the
3 categories ranked 1 and 2 in Question 3.

4 So in many cases it was essentially
5 impossible to have a one-to-one correlation.

6 Q. Okay. And then, finally, you were --
7 you were just starting to describe, but if you
8 would just briefly tell us about the limit to
9 the eight most widely carried distant signals?

10 A. Yes, we found that that was a growing
11 issue with the consolidation of systems, and we
12 felt that it was important to have a manageable
13 number of distant signals to ask respondents
14 about.

15 We looked at the composition of the
16 signals carried by these types of systems. We
17 found that, I think it was 97 percent, of
18 signals 9 and above were carried to -- were
19 available to fewer than 10 percent of an
20 individual system's subscribers.

21 And close to 90 percent, it was fewer
22 than 2 percent of a system's subscribers that
23 were receiving them on a distant basis. And so
24 we -- we made the decision that we could limit
25 that number of distant signals.

1 And by comparison, Horowitz in some of
2 his surveys asked respondents about upwards of
3 80 distant signals.

4 Q. Was that issue of the number of
5 signals something that had been raised by the
6 Judges in the prior proceeding?

7 A. Yes, that's my recollection, yeah.

8 Q. Okay. I want to ask you a couple
9 questions now about the amended rebuttal
10 testimony of Dr. Stec.

11 At page 30 he asserts that "if the
12 Bortz survey is reliable, then there should be
13 little variation between the percentages given
14 by a CSO in one year's survey when compared to
15 other years' surveys."

16 Do you agree or disagree with that
17 statement?

18 A. I disagree. I think that's an
19 incorrect hypothesis. We find and have found
20 over the years in doing these surveys -- and I
21 certainly see it in my industry work -- that
22 there is changes that take place year-to-year
23 within the industry, there is changes at
24 individual systems, and there is changes in
25 management within those systems.

1 There is changes in the programming on
2 the distant signals that are carried. We see
3 that with the WGNA programming summaries
4 specifically where we have looked at it pretty
5 closely.

6 And really, most importantly, we see
7 that even in a year-to-year comparison of the
8 same systems, there's -- it is very frequent
9 that the distant signals that are carried by
10 that system from one year to the next are not
11 the same.

12 And so my expectation, actually, would
13 be that in a large majority of instances of
14 this point comparisons of year-over-year
15 instances, there wouldn't be a reason to expect
16 the responses to be particularly consistent,
17 especially from a statistical point of view.

18 Q. Okay. And did Dr. Stec control for
19 any of those factors in his analysis?

20 A. No, he didn't. I looked at his Table
21 1 in particular, and I did my own analysis of
22 single-year comparisons within our data set for
23 2010 to '13.

24 And I found the same number of data
25 points of -- just the absolute number of

1 year-to-year comparisons was, I think, 191 in
2 those, in that three-year period. And I found,
3 for example, that 47 percent of those 90 did
4 not carry the same distant signals in one year
5 to the next.

6 I think it is reasonable to conclude,
7 although I didn't look comprehensively at it,
8 that when you are looking at comparisons that
9 involve up to four years apart, so some of his
10 data points are comparisons of 2009 to 2013,
11 2010 to 2013, where you are spanning a two- or
12 three- or four-year period, I think the issues
13 of that nature would be even greater.

14 So, as I say, I think there's -- in
15 the majority of instances, you would not expect
16 necessarily a consistency of response for the
17 same system because, in terms of their distant
18 signal carriage, they are really a different
19 system.

20 Q. Dr. Stec says at page 29 of his
21 amended rebuttal testimony that in doing his
22 analysis, he "matched the survey respondents by
23 a CSO for each of the periods in which the same
24 survey methodology questionnaire and sampling
25 design were used."

1 Is that an accurate statement?

2 A. Well, we used the same broad
3 questionnaire and sampling design in all four
4 -- in 2009 through 2013.

5 So I guess technically it is correct,
6 but he clearly, I looked at his underlying
7 data, and he clearly didn't look at whether the
8 same version of the questionnaire was used or
9 anything of that nature because he has in there
10 comparisons where in one year there's an entry
11 for a Public Television system, a response for
12 a Public Television category, and then in the
13 next year there's not.

14 And he has instances where, you know,
15 there's -- where it's evident to me, you know,
16 that there were changes in the characteristics
17 and he hasn't accounted for those.

18 Plus, as I said, I just totalled up
19 that subset from '10 to '13 and found that he
20 just basically took all of the available data
21 points and didn't put any controls on them.

22 Q. Were there also instances where a
23 system was, say, WGN-only in one year and then
24 WGN and additional signals in another year?

25 A. A number of instances of that, yes.

1 Q. Okay. Is this analysis by Dr. Stec
2 something new or has a similar analysis been
3 presented in prior proceedings?

4 A. I believe Dr. Frankel conducted an
5 analysis very much like this one in the 1992 --
6 or provided testimony on an analysis like this
7 in the 1990 to '92 proceeding.

8 Q. Now, Dr. Stec also did a comparison of
9 systems' Bortz survey responses to their
10 Horowitz survey responses.

11 Was that an appropriate way to assess
12 reliability?

13 A. Well, again, I don't think so. As we
14 have talked about, you have got an additional
15 category in the Horowitz survey and, as I
16 indicated, I don't feel that the Horowitz
17 survey has produced reliable results.

18 So I wouldn't expect it to line up
19 with the results of the Bortz survey.

20 Q. Okay. Then I want to briefly ask you
21 about Dr. Erdem.

22 Did you see in his amended rebuttal
23 testimony he did an analysis that he says
24 indicates that the presence of non-compensable
25 programming on WGNA does not impact the

1 devotional survey allocations?

2 A. I did see that.

3 Q. And what's your assessment of that
4 analysis?

5 A. Well, I don't think it really analyzes
6 that issue to any degree. It compares WGN-only
7 systems to systems that carry WGN along with
8 other distant signals. And I don't see how you
9 can glean from that that there is no
10 compensability impact.

11 And I also looked at the table that he
12 has in the back that summarizes his findings,
13 and I see that the average value among the
14 WGN-plus systems, I'll call them, was
15 4.9 percent for devotional versus, I think it
16 is 3.5 percent for the WGN-only systems, which
17 he says it's not statistically significant, and
18 I don't have a reason to quibble with that, but
19 it is a 40 percent difference.

20 Q. Finally, Mr. Trautman, could you just
21 summarize your overall opinions on the utility
22 of the Bortz and Horowitz surveys in resolving
23 the issue of relative market value the Judges
24 will be deciding?

25 A. Sure. I think, as I have indicated,

1 that the Bortz survey is the -- it's the best
2 indicator and most reliable indicator of
3 relative market value. And I don't think that
4 you can rely on the Horowitz survey to any
5 degree, except maybe that it does confirm that
6 live team sports ranks the highest in terms of
7 relative value allocation.

8 MR. LAANE: Thank you, Mr. Trautman.
9 I have no further questions at this time.

10 JUDGE BARNETT: Mr. Olaniran, I see
11 you preparing. Are you going to be up next?

12 MR. OLANIRAN: Yes.

13 CROSS-EXAMINATION

14 BY MR. OLANIRAN:

15 Q. Good morning, Mr. Trautman. My name
16 is Greg Olaniran. I represent Program
17 Suppliers.

18 A. Good morning.

19 Q. Would you please turn to your
20 Exhibit 1000. This is your bio.

21 A. Yes.

22 Q. Are you there?

23 A. I am at the first page of it.

24 Q. Okay, the first page. I have a few
25 questions for you about the first page.

1 And in that first -- in the second,
2 second bullet, you identify your expertise as
3 including analysis of consumer behavior,
4 preferences and audience behavior.

5 Do you see that?

6 A. Yes, that's a component of it.

7 Q. And then the fourth line where you
8 make that reference, do you see it?

9 A. Yes.

10 Q. And what do you mean by "audience
11 behavior"?

12 A. Viewing.

13 Q. Viewing?

14 A. Primarily.

15 Q. And what was the -- and what's the
16 nature of your expertise with regard to
17 viewing?

18 A. We have analyzed viewing patterns and
19 ratings and projected ratings on behalf of
20 various clients.

21 Q. And what was the purpose of that
22 analysis, of those analyses?

23 A. Sometimes it is included in business
24 models, economic models. Other times it is for
25 purposes of estimating advertising prospects.

1 Q. And when you said business models or
2 economic models, for the purpose -- for what
3 particular purpose?

4 A. In some cases for the purpose of
5 estimating -- developing a model that could be
6 used in estimating the value of a programming
7 network or a particular programming.

8 Q. So you have used viewing methodology
9 to try to determine market value of individual
10 programs as well as programming networks?

11 A. No, I wouldn't say that. I have used
12 it to project advertising revenues that may
13 generate cash flow, that may feed into a value.

14 Q. And why would you need to use that to
15 project advertising revenues?

16 A. Well, I think they are a benchmark
17 that is used in contributing to pricing of
18 advertising in the marketplace, and --

19 Q. Can you be more specific about that?
20 Let's take a broadcaster, for example. Why
21 would you be looking -- why would you be
22 looking at viewing to determine advertising
23 prospects?

24 A. Well, as I said, viewing is a
25 benchmark that is used to help set advertising

1 prices in the marketplace for the sale of those
2 advertising spots, they're called, in the
3 industry to advertisers.

4 Q. And have you represented broadcasters
5 to do that, that type of analysis? Have you
6 ever represented broadcasters to do that type
7 of analysis?

8 A. Well, on occasion. Generally it would
9 be in conjunction with working with an
10 investment bank or something like that who
11 might be involved in an acquisition.

12 Q. And why would a broadcaster be
13 interested in advertising prices?

14 A. Because they generate revenue from the
15 sale of advertising.

16 Q. And how do they generate -- strike
17 that.

18 So is it the case that when a
19 broadcaster purchases a program, for example,
20 they look to see whether they can cover their
21 program costs with their advertising revenue
22 generated for that program; is that a fair way
23 to put it?

24 A. For a broadcaster, certainly, yes.

25 Q. Okay. Also still on that first page,

1 in the third bullet, you describe your
2 consulting experience and you identify cable
3 and broadcaster network clients such as A&E and
4 CBS, I think Disney, Public Broadcasting, and a
5 few others.

6 And did any of that consulting
7 experience include audience measurement?

8 A. We don't engage in audience
9 measurement.

10 Q. What about audience analysis or
11 behavior?

12 A. We may have occasionally looked at
13 that. And certainly, as I mentioned
14 previously, in terms of developing projections,
15 that would be part of that.

16 Q. And why would a cable network be
17 interested in audience behavior?

18 A. Well, again, cable networks, in
19 addition to securing license fees from cable
20 operators, sell advertising in the marketplace.

21 Q. And have you ever had -- have you done
22 -- have you ever done work for a cable
23 broadcaster with regard to audience analysis --
24 I'm sorry, a cable system, a cable system
25 operator with regard to audience behavior or

1 audience analysis?

2 A. Maybe in a very limited way. I have
3 done projections for cable systems in terms of
4 their overall revenue streams. And for cable
5 systems, advertising represents a very small
6 revenue stream.

7 But -- so I may have looked at a
8 future forecast of it, or something like that.
9 I don't know that I have developed estimates
10 myself.

11 Q. So you have never developed any
12 estimates for individual programs for a cable
13 system operator, have you?

14 A. No.

15 Q. Let's go to page 3, still in that same
16 exhibit. The second bullet on page 3, I want
17 to ask you a couple questions about that.

18 You talk -- in that bullet it talks
19 about your analysis of fair market value of
20 television, radio and Internet rights for
21 programming rightsholders.

22 Do you see that?

23 A. Yes.

24 Q. And what kind of television rights
25 were involved in the analysis that you engaged

1 in?

2 A. Those are generally -- those generally
3 involve sports rights.

4 Q. Okay. And in analyzing those sports
5 rights, what kinds of factors did you look at
6 with regard to the sports rights?

7 A. Well, again, we would develop a model
8 looking at, on behalf of the potential
9 acquiring network or distributor, what kind of
10 revenues could be generated from the
11 programming. And we would make projections of
12 that in order to estimate the value of the
13 rights.

14 Q. And what kind of factors would you
15 look at in making that determination?

16 A. Well, it depends on the outlet that
17 we're looking at, whether we're looking at
18 broadcast distribution or Internet distribution
19 or subscription television distribution.

20 Q. Let's look at -- let's talk about
21 broadcast distribution, for example.

22 Would one of the factors you looked at
23 have been audience levels of their particular
24 content?

25 A. Yes.

1 Q. And why would that be important?

2 A. Well, again, that revenue stream would
3 certainly be advertising revenue.

4 Q. Okay. Then were you talking about
5 programs that had already been developed or
6 programs that were going -- that were yet to be
7 developed in this instance?

8 A. Well, with sports rights it's
9 typically programming that is already out there
10 in the marketplace and rights are being renewed
11 or have come up for potential resale to a
12 third-party or something like that.

13 Q. When you are selling to broadcasters,
14 certainly ratings or some form of viewing
15 analysis is a key component of the revenue
16 analysis, is it not?

17 A. It is. Increasingly retransmission
18 consent license fees are an important
19 consideration as well, but advertising is
20 definitely a big consideration.

21 Q. And then the advertising prices,
22 again, are tied to the levels of viewing?

23 A. Within certain contexts. I mean,
24 there is demographic factors. There is a
25 variety of other considerations that need to be

1 taken into account.

2 Q. And demographic factors, in fact, are
3 subsumed to some extent into viewing -- into
4 viewing, are they not?

5 A. Oh, well, yes. But certainly the rate
6 at which advertising is sold depends on the
7 demographics, as well as the sheer numbers.

8 Q. Fair enough.

9 A. It also depends on things like the
10 time period in which the programming is going
11 to air and things of that nature.

12 Q. You mean day part, is that what you
13 are referring to?

14 A. Yes.

15 Q. Thank you. And still in that second
16 bullet, later on in the same paragraph you
17 state that you analyzed entertainment and
18 sports content, to consider a few things.

19 And one of the things you mention is
20 the audience potential. What type of
21 entertainment content were you referring to in
22 that part?

23 A. That would have been some of the
24 things that are mentioned below, perhaps
25 programming libraries or certain potential

1 syndicated -- collections of syndicated
2 programming, that type of thing.

3 Q. When you said syndicated, what do you
4 mean by syndicated content?

5 A. Well, in the examples I am thinking of
6 here, it would be a collection of programs that
7 had been produced for resale to either
8 individual broadcasters or to, potentially to a
9 cable network.

10 Q. So would those be -- what kind of
11 genres of programming are you referring to?

12 A. Perhaps like a history-type
13 documentary or something along those lines. I
14 think that would be an example.

15 As I have said, most of the work we
16 have done in this area is concentrated in the
17 sports rights area.

18 Q. Understood. And when you are looking
19 at this audience potential or advertising
20 prospects, what factors are you looking -- are
21 you considering?

22 A. When we're -- I'm sorry, can you
23 repeat that?

24 Q. Let me rephrase that.

25 When you say that you're considering

1 the audience potential of a particular type of
2 product -- well, let me back up.

3 In this particular instance what was
4 your clients trying to do?

5 A. Well, they were trying to get their
6 product licensed.

7 Q. They were trying to license the
8 product. So my question is, when you look at
9 audience potential, what factors are you
10 looking at about the impact of audience
11 potential as it would ultimately impact the
12 licensing fee?

13 A. Well, usually there is a history of
14 performance of other similar programs or of
15 that program directly. If you are doing it
16 from scratch, it is sort of based on the
17 characteristics of the program.

18 Q. And when you are talking about
19 history, you are talking about the history of
20 performance in a particular distribution
21 channel; is that what you mean by that?

22 A. Yes.

23 Q. And so if you were to be -- if you
24 were trying to license, say, the Seinfeld
25 series, for example, you would look at the

1 performance -- if you were trying to license
2 the show Seinfeld to a broadcast station, where
3 would you go to look at the history?

4 A. Well, you would look at its
5 performance as a network series prior to having
6 entered into syndication.

7 Q. And by performance, what do you mean
8 by that?

9 A. I think you would -- you would
10 certainly look at audience results that it had
11 achieved.

12 Q. Okay. You would look to see if it did
13 well, how well it did when it was on the
14 network, correct?

15 A. Yes.

16 Q. And to the extent that it had been
17 syndicated prior to the deal you were
18 contemplating, you would look at that
19 performance also?

20 A. Yes.

21 Q. Okay. Now, you mentioned, still in
22 the same paragraphs, you talked about other
23 economic drivers, as well as cost factors with
24 regard to your analysis of this entertainment
25 content.

1 What do you mean by that?

2 A. Well, certainly in the cable
3 marketplace, and with respect to sports rights,
4 cable networks charge license fees. And when
5 we look at programming rights values for our
6 rightsholders, we attribute a share of those
7 license fees to the particular programming.

8 And that is usually the key driver of
9 value.

10 Q. Okay.

11 A. And when I say license fees, I should
12 clarify, that's not license fees like licensing
13 a syndicated program. That's the subscriber
14 fees that are paid by the cable system operator
15 to the cable network.

16 Q. And that would be to license the
17 bundle programming on a particular network; is
18 that right?

19 A. That's correct.

20 Q. Okay. Because cable operators
21 themselves don't buy individual programming; is
22 that right?

23 A. I mean, they do in limited instances,
24 perhaps, but you are correct, yes.

25 Q. Okay. Just a couple quick questions

1 about your survey experience.

2 You have mentioned that you have done,
3 I think you said 75 surveys. Is that right?

4 A. 75 survey assignments, yes.

5 Q. Survey assignments. I'm sorry.

6 And have you actually designed a
7 questionnaire by yourself or did you supervise
8 these surveys?

9 A. I think in every instance we have
10 designed the questionnaire.

11 Q. I meant you personally.

12 A. I have certainly been directly
13 involved in it, if I wasn't the sole individual
14 who developed the questionnaire.

15 Q. So the answer is yes, you have
16 designed a questionnaire by yourself before?

17 A. Yes.

18 Q. Okay.

19 JUDGE FEDER: Excuse me. What
20 distinction are you making between surveys and
21 survey assignments?

22 THE WITNESS: Well, there may be
23 instances where we have had an assignment that
24 involved more than one survey.

25 JUDGE FEDER: Thank you.

1 BY MR. OLANIRAN:

2 Q. And besides the Bortz surveys -- how
3 many of the 75 are Bortz surveys?

4 A. None of them.

5 Q. Okay.

6 A. Bortz surveys as referred -- referring
7 to these proceedings? Is that what you were
8 referring to?

9 Q. Yes, that's what I mean.

10 A. Yes, none of them.

11 Q. Okay. Now, when Mr. Laane was
12 questioning you this morning, I think you
13 opened with the statement that the Bortz survey
14 was designed to show how cable operators would
15 have valued programming in a free market,
16 absent a compulsory license. Is that correct?

17 A. Yes.

18 Q. Okay. And so --

19 A. Distant signal programming.

20 Q. Distant signal programming, correct.

21 And let's go to Exhibit 1001. And I
22 think Your Honors already have a hard copy
23 already.

24 JUDGE STRICKLER: We have one copy, I
25 think, up here.

1 MR. OLANIRAN: Do you need additional
2 copies?

3 JUDGE BARNETT: No, we're using the
4 electronic.

5 MR. OLANIRAN: I think Mr. Trautman
6 already has that exhibit in front of him.

7 THE WITNESS: Yes.

8 JUDGE BARNETT: Okay.

9 BY MR. OLANIRAN:

10 Q. Okay. And Exhibit 1001 is the
11 operator valuation report. And throughout the
12 report, I mean, you say rather glowing -- you
13 make glowing remarks about the abilities of the
14 Bortz survey respondents; is that correct?

15 A. I am not sure I characterized it that
16 way, but maybe you can point me to something.

17 Q. How would you characterize it?

18 A. Well, we attempt to survey and we
19 believe we do survey knowledgeable respondents
20 that are the most qualified for the task at
21 hand in that they are those responsible for
22 making decisions about the programming carried.

23 Q. Let's look at appendix -- the Appendix
24 A of that exhibit, particularly Appendix A-8,
25 the first full paragraph. Are you there?

1 A. Yes.

2 Q. If you look about halfway through the
3 paragraph you describe the respondents as, and
4 I quote, "not lay persons, cable industry
5 programming professionals."

6 Do you see that?

7 A. Yes.

8 Q. Okay.

9 JUDGE STRICKLER: What page are we on?

10 MR. OLANIRAN: I am on page --

11 Appendix A-8.

12 JUDGE STRICKLER: A-8.

13 MR. OLANIRAN: A-8.

14 BY MR. OLANIRAN:

15 Q. And let's go to -- I hate to do that
16 to you, Your Honor, since you just got there --
17 let's go to Appendix A-14, in paragraph --

18 A. Sorry, A-14?

19 Q. Yes. Are you there?

20 A. Yes.

21 Q. In paragraph -- the very first
22 paragraph on that page, paragraph 8, it talks
23 about survey length.

24 By the way, what is the average length
25 of the survey, of your survey?

1 A. It is ten minutes or so.

2 JUDGE STRICKLER: We got to a question
3 that I had in my mind. What's the average
4 length? Is there a range? Do some people do
5 it much -- some respondents respond much faster
6 and some respond longer? What is the variation
7 or variance around that average?

8 THE WITNESS: I would say it is 10 to
9 15 minutes, but it -- it depends in part, too,
10 on how many categories we have to go through.
11 And so that's probably the primary determinant,
12 more than how long a respondent takes.

13 BY MR. OLANIRAN:

14 Q. And if we look at Appendix A, page 14,
15 paragraph 8, again, towards the fourth line
16 from the bottom you describe the respondents as
17 "experienced and highly knowledgeable regarding
18 the cable industry, the programming that they
19 carry, and the interests of their subscribers."

20 Do you see that?

21 A. Yes.

22 Q. Okay.

23 JUDGE STRICKLER: Excuse me. How do
24 you know that?

25 THE WITNESS: Well, these are

1 individuals that we have gleaned through our
2 process to be those most responsible for making
3 programming carriage decisions.

4 We're getting senior executive titles
5 at either a regional or a local level in areas
6 that reflect a knowledge base regarding the
7 cable industry and the programming that their
8 system carries.

9 And, therefore, in turn, I guess it is
10 a little bit presumptive to say the interests
11 of their subscribers, but that's certainly part
12 of the job in terms of assessing the packages
13 of programming that they carry and the overall
14 practice of engaging in their job.

15 JUDGE STRICKLER: So I notice from the
16 start of the survey questions, you asked to
17 speak with the listed respondents. You already
18 have a name in mind.

19 And then only if that person is not
20 available or says that person is not the
21 appropriate person, do you then go to another
22 person?

23 THE WITNESS: Yes. And that's a
24 helpful thing to explain our process, that the
25 identified individual in our survey is always

1 the most senior executive at the system in
2 question.

3 So they might have the title of
4 general manager or president or something of
5 that type, but it is -- that's the industry
6 data that we have available. And so that's --
7 and it's, also, we want to reach the ultimate
8 decision-maker at that system.

9 And so then through the process of
10 contacting the system we reached that
11 individual and we ask them that qualifying
12 question about whether they are most
13 responsible for programming decisions or not.

14 In some cases, in a fair number of
15 cases, they say yes, and they complete the
16 survey. In other instances they say, you know,
17 I'm really not. It's so and so. And so they
18 direct us to someone sometimes at the regional
19 level or sometimes it is someone in their --
20 who heads their programming group, or sometimes
21 it is someone in their marketing group, and
22 that's the person then that we attempt to
23 survey.

24 And, of course, once we get to that
25 person, they also have to say that they are, in

1 fact, the most qualified person.

2 JUDGE STRICKLER: Do you tell them who
3 it was who referred you to them? In other
4 words, do you say to the regional person: The
5 president said you're the guy who would, or the
6 woman, who would know the most?

7 THE WITNESS: The survey -- well, we
8 don't necessarily say that to them. We say
9 that we will -- the survey research firm will
10 say that so and so referred us to speak to you
11 about this survey.

12 JUDGE STRICKLER: Thank you.

13 BY MR. OLANIRAN:

14 Q. I think still staying on Appendix A,
15 page 14, if you go down to the last paragraph
16 of that page, that's paragraph -- well, the
17 number 9, the way it discusses supply side.

18 Do you see that?

19 A. Yes.

20 Q. You also characterize the responses of
21 these respondents that it reflects an
22 understanding of marketplace prices of
23 different kinds of programming. Is that right?
24 Do you see that?

25 A. Yes.

1 Q. And then the very last sentence on
2 this page, which flows over to page 15, you
3 describe the respondents as active in the
4 marketplace for cable programming and are
5 familiar with rates charged by sellers of
6 various genres of cable network.

7 Do you see that?

8 A. Yes.

9 Q. So is it fair to say that after you
10 have screened the respondent and you have
11 gotten to the -- after the interviewer has
12 screened the respondent and gotten to the
13 person that is supposed to be most
14 knowledgeable, that this person is familiar --
15 is very knowledgeable about the system's
16 carriage decisions, correct?

17 A. Well, they have told us that they are,
18 yes.

19 Q. And they have also -- they would have
20 told you that they are also knowledgeable about
21 the content carried on the distant signals; is
22 that right?

23 A. They -- they would have told us that
24 they are the most knowledgeable about
25 programming carriage decisions.

1 Q. Including the content that is carried
2 on the distant signals, correct?

3 A. We don't specifically ask them about,
4 about the distant signals until we get to the
5 second question.

6 Q. But it is important to your process
7 that they know about the content they are
8 carrying on the distant signals, is it not?

9 A. Yes, it is.

10 Q. Okay.

11 A. And that's why we start at the local
12 level and do kind of a bottom-up approach
13 because we believe that, since most of these
14 signals, in fact all of them other than WGN,
15 are quasi-local in nature, they are distant for
16 purposes of these proceedings, but they are
17 carried within a region surrounding -- a region
18 that the system surrounds or is part of that we
19 feel it is important to, you know, start at the
20 local level and work our way up, if necessary,
21 to get individuals that are particularly
22 familiar with the local aspect of the distant
23 signal carriage decision.

24 Q. But implicit in the qualifying
25 question is the knowledge of carriage

1 decisions, correct?

2 A. Yes, and programming.

3 Q. Their knowledge of contents carried on
4 distant signals, correct?

5 A. Implicit, yes, I would say.

6 Q. Their knowledge of the cost of the
7 content that they are carrying, correct?

8 A. Certainly of costs as we express it
9 here, of the rates charged by sellers of genres
10 of cable networks. I have acknowledged that
11 they are not engaged in buying individual
12 programs.

13 But they are familiar with the
14 purchase of genres of programming and
15 collections of programming in the form of cable
16 networks.

17 Q. So let me ask this different. Is it
18 fair to say that the purpose of the qualifying
19 question is to determine that the person you
20 are speaking with is knowledgeable about
21 carriage decisions, knowledgeable about the
22 content carried on distant signals,
23 knowledgeable about the cost of the content; is
24 it fair to say that?

25 A. I would say it is fair to say that

1 they are knowledgeable about the programming
2 carried by their system and the factors that go
3 into carriage decisions related to that
4 programming. And that would include the
5 distant signals.

6 Q. Are you -- once they tell you that
7 they are, that's what qualifies them, correct?

8 A. Yes.

9 Q. And you have no other -- you don't
10 independently verify whether they, in fact, are
11 knowledgeable about those things, do you?

12 A. No, there is not an independent
13 verification process, other than, other than
14 certainly looking at the title of the
15 respondent.

16 Q. Would you expect the respondent also
17 to know about the volume of the various types
18 of content carried on the distant signals?

19 A. Well, here we get into that signature
20 programming and dominant impression issue that
21 I brought up earlier.

22 I think that certainly they are very
23 knowledgeable or very familiar with the
24 characteristics of the different programming
25 that they carry, including the programming on

1 the distant signals.

2 And that includes knowledge about
3 volume and about the key programming on those
4 signals, in my opinion. Does it include
5 precise knowledge about the volume of
6 particular programming or programming at the
7 edges on a particular signal? Not necessarily.

8 And I'm not sure that's how decisions
9 are made within the cable industry in terms of
10 programming carriage. In fact, I don't believe
11 that it is, as I have expressed earlier.

12 Q. So the answer to my question is no,
13 they don't?

14 A. No, the answer is yes, they do know
15 about volume. But the volume knowledge I would
16 characterize as broadly speaking.

17 Q. The volume knowledge, though, if I
18 understand your answer correctly, is limited to
19 the dominant impressions or signature
20 programming?

21 A. No, I wouldn't say that. I would say
22 that they -- they certainly have the greatest
23 familiarity with the signature programming, but
24 they have broad knowledge about the volumes of
25 programming on those signals, would be my

1 estimation.

2 Q. What do you mean by "broad knowledge"?
3 They know 70 percent of what they carry,
4 20 percent? What do you mean by broad
5 knowledge?

6 A. I think they know what the primary mix
7 of programming is on those signals that they
8 carry.

9 Q. And how do you know that, that they
10 know?

11 A. That's -- that's my estimation and
12 opinion based on my familiarity with the
13 responsibilities of these individuals.

14 I have consulted over the years with
15 many individual cable systems, many multiple
16 system operators. I have visited many systems.
17 I have talked to many of these people, you
18 know, not in this capacity, of course.

19 But -- so I have a great deal of
20 understanding as to the things that they know
21 and how they look at programming and how they
22 evaluate it.

23 Q. And when you refer -- when you use the
24 phrase cable industry programming
25 professionals, what do you mean by "cable

1 industry programming"? Are you referring to
2 cable network programming or are you referring
3 to broadcast signal programming?

4 A. Well, I would say I'm referring
5 comprehensively to the package of programs that
6 they offer to their subscribers, the package of
7 -- sorry, program networks, including broadcast
8 stations that they offer to their subscribers.

9 JUDGE STRICKLER: Is that why you said
10 before that's implicit in the screening
11 question, that they also have knowledge about
12 the retransmitted distant signals?

13 THE WITNESS: Yes, if they are
14 responsible for programming carriage decisions,
15 they are making decisions about, in my
16 experience, all of the programming that they
17 carry, including the broadcast signals that are
18 -- that are chosen to be retransmitted or are
19 retained for retransmission.

20 JUDGE STRICKLER: Why isn't your
21 initial screening question in that regard
22 asking to speak to the person who is most
23 responsible for making carriage decisions as it
24 relates to distantly-retransmitted signals, and
25 if it turns out that you are right, it's the

1 same person for that and other carriage
2 decisions, you will get that person, but if
3 there is a different person who has more
4 responsibility or more knowledge with regard to
5 the distantly-retransmitted stations, you can
6 get to that person, because at that point in
7 time when you are asking the screening
8 question, the person who is responding doesn't
9 know what you are going to be asking about yet;
10 isn't that correct?

11 THE WITNESS: That's correct. And so
12 we are looking for the person with broad
13 programming knowledge at the system. And part
14 of that is because, you know, we are talking
15 about a hypothetical marketplace here.

16 And so we're looking to obtain a
17 relative value allocation. And we feel it is
18 important for them to have a broad
19 understanding of value decisions that enter
20 into choosing all of the programming that they
21 carry and an understanding of the license fees
22 for that programming and the relative cost of
23 that programming, and those types of factors.

24 JUDGE STRICKLER: So there is an
25 actual business decision that somebody or some

1 group of people have to make as to which
2 distantly-retransmitted signals they'll put
3 into their cable packages, but you want to know
4 more broadly what people -- you want people
5 with more broad knowledge as to what they would
6 do in a hypothetical market separate and apart
7 from or in addition to that particular
8 determination?

9 THE WITNESS: Yes, in order to make a
10 value allocation for various types of
11 programming, rather than specific to, say, a
12 distant broadcast station, as a station we feel
13 that that's important.

14 BY MR. OLANIRAN:

15 Q. So with regard to -- just to follow up
16 on the Judge's question -- with regard to the
17 value allocation that you are intending for
18 them to make, is that value allocation limited
19 to distant signals or is it limited to -- or is
20 it a broader allocation as to programming that
21 they are carrying on the system?

22 A. No, we're asking them to focus on the
23 distant signal programming and to make a value
24 allocation for that programming or those
25 collections of programming as they fit into the

1 types that we're talking about.

2 Q. But you are asking for a professional
3 that has a broad acknowledge of programming.
4 And how are you ensuring that this person has
5 not been influenced by the other types of
6 programming that they are carrying that are not
7 on broadcast signals?

8 A. Well, I think they -- I think they
9 should be influenced by that. I think that
10 their overall, as a cable operator, their
11 overall packaging decisions and decisions with
12 respect to cable networks and all of that
13 should factor into their consideration of the
14 relative value of the types of programming on
15 these distant signals.

16 We're asking them to think about the
17 programming that's on those distant signals,
18 but we want them to be knowledgeable about how
19 a relative value allocation can be made among
20 those different programming types that may
21 appear on a lot of the different cable networks
22 that they carry.

23 And so we want someone who is familiar
24 and senior enough and in a position to make a
25 value judgment with respect to that.

1 Q. So then the relative value allocation
2 that you are looking for them to make should be
3 influenced by programming that are not on
4 broadcast signals; is that what you are saying?

5 A. No. It should be informed -- it
6 should be informed by their knowledge about the
7 value of programming in the marketplace
8 considered broadly.

9 Q. So if a respondent is making an
10 allocation for live team sports, they should be
11 thinking about what's on ESPN and what's on
12 network programs?

13 A. No, that's not what I'm saying.

14 Q. What are you saying?

15 A. There's -- there's not a distant
16 signal programming marketplace. So we are
17 looking for people who can draw from their
18 experience within the cable industry as a cable
19 system operator in making value judgments about
20 programming, collections of programming, in
21 order to translate that value judgment to a
22 distant signal -- to the types of programming
23 on distant signals.

24 JUDGE STRICKLER: You say there is not
25 a distant signal marketplace. Correct me if I

1 am wrong, but the person who you are speaking
2 with or somebody else at the cable system has
3 to make a decision as to which
4 distantly-transmitted station, WGNA, WPIX or
5 what have you, they'll decide to put into
6 their -- into their cable packages, right?

7 THE WITNESS: That's correct.

8 JUDGE STRICKLER: So they are -- and
9 they are free to do -- that's a free
10 marketplace, right? Nobody is twisting
11 anybody's arm. There is no government
12 regulation that says you must, you must
13 retransmit WGNA or WPIX; that's a business
14 decision?

15 THE WITNESS: Yes. And in making that
16 decision, you know, we believe that they have
17 made a value judgment about the programming
18 that's on that signal, just like they made
19 value judgments about the collection of
20 programming that's on all of the other signals
21 that they carry.

22 JUDGE STRICKLER: And then they have
23 to pay WGNA for the right to carry that
24 retransmitted station?

25 THE WITNESS: Yes.

1 JUDGE STRICKLER: And that's a
2 marketplace negotiation, right?

3 THE WITNESS: Well, it is a -- it is a
4 set price, but yes. It is the result of a --
5 sort of indirectly the result of a marketplace
6 negotiation.

7 JUDGE STRICKLER: Help me out. Maybe
8 this is my ignorance, but how is that price
9 determined?

10 THE WITNESS: Well, in terms -- so
11 there is the royalty fee.

12 JUDGE STRICKLER: Right. That's the
13 royalty fee which is set by the government, and
14 then it is allocated and distributed here.

15 But how about, other than that, the
16 right to carry, is there a --

17 THE WITNESS: No, there is not a
18 separate negotiation there.

19 JUDGE STRICKLER: So if -- if --

20 THE WITNESS: They have -- they have
21 the right to carry it.

22 JUDGE STRICKLER: But with no
23 additional, no additional payment, other than
24 the royalties?

25 THE WITNESS: Well, what I'm wrestling

1 with is I'm not sure if there is still an
2 intermediary payment that is made for WGN. I
3 don't believe that there is. There used to be.

4 But for any of the other distant
5 signals, there is not. So it is just -- it is
6 just the royalty.

7 JUDGE STRICKLER: Thank you.

8 BY MR. OLANIRAN:

9 Q. And in that last quote, you talk about
10 a cable network marketplace. And I want to
11 make sure I understand what you mean by that.

12 Are you talking about a marketplace
13 where only cable networks are being licensed to
14 cable systems or are you talking about a cable
15 network programming marketplace?

16 A. I am, in terms of a cable operator and
17 their knowledge, I am focusing primarily on
18 their knowledge of cable networks and the
19 prices that they pay to carry those networks,
20 which are collections of programming.

21 Q. Okay. And just to wrap up the line of
22 questioning with the Judges, if I understand
23 your -- with the Judge -- if I understand your
24 responses correctly, you want someone with
25 broad experience, to have cable network

1 programming experience, you want them to draw
2 from that experience, but you don't want them
3 to be influenced by that experience. Is that a
4 fair summary of your testimony?

5 A. No, that's not a fair summary. The
6 first two things you said were correct. But we
7 want them to be influenced by that experience
8 in terms of making relative value allocations
9 for the programming types that appear on
10 distant signals, since they don't have to make
11 those allocations in order to obtain those
12 signals.

13 Q. So you want them, if you are making an
14 allocation for joint team -- for live
15 professional team sports, you want them to
16 think about a network program such as the NFL
17 or NCAA Tournament, but somehow -- and be
18 influenced by that, but not to the extent that
19 it affects their allocation, or that it does?
20 I am not sure I understand.

21 A. Well, I think I answered your
22 question, but I want them to be influenced by
23 their broad knowledge of the marketplace in
24 making the relative value allocation.

25 And when I am talking about the broad

1 marketplace, I'm talking primarily about the
2 cable network marketplace.

3 Q. You are certain that when they make
4 that allocation, based on your expectation of
5 how they should think about the process, it
6 doesn't lead to overvaluation of, say, sports
7 programming?

8 A. I don't see any reason why it would
9 bias their valuation of any category of
10 programming. They carry all types of
11 programming.

12 Q. So they wouldn't, for example, be
13 influenced by, say, their knowledge of live
14 sports on ESPN, given that it is the most,
15 probably the most highly-carried cable network
16 program?

17 A. No more than they would be influenced
18 by their knowledge of Game of Thrones on HBO or
19 Walking Dead on AMC.

20 JUDGE STRICKLER: I think you said
21 before, in response to one of the questions,
22 that you want the respondents to be thinking in
23 terms of a hypothetical marketplace. Is that
24 right?

25 THE WITNESS: I am not sure I said

1 that directly. I think the reality is that
2 it's a hypothetical marketplace because they
3 are not asked to do this specific to distant
4 signals.

5 JUDGE STRICKLER: Do you understand
6 the respondents to be deciding, say, to stay
7 with the team sports analogy -- or not analogy,
8 but example -- that if they are deciding on
9 whether or not they should distantly -- they
10 should retransmit a distant signal that has
11 team sports, heavily weighted towards team
12 sports, they should do that keeping in mind the
13 other team sports that are already on the cable
14 system, such as on ESPN or, you know, any of
15 the broadcast stations, and make their
16 determination that way, or are you just simply
17 saying this is why we screen for people with
18 broad knowledge so they can make those
19 decisions themselves?

20 THE WITNESS: Well, I think that
21 absolutely enters into our desire to get
22 someone with broad knowledge, because we want
23 someone who understands the programming that is
24 already on their system and what was -- and can
25 factor in what was the basis for the carriage

1 of the distant broadcast signal and the
2 programming on that signal, as opposed to just
3 considering it in a vacuum.

4 So I think, to your point, I think it
5 is important that they are aware, for example,
6 that there are other sports on their system.
7 And this goes into what a programming or
8 marketing, senior marketing or programming
9 person does within the cable industry, is to
10 build a package or a collection of programming
11 networks based on consideration of, okay, we
12 already have these networks, now we need to add
13 this one to fill out either something that's
14 missing or to supplement something, and so
15 there are particular reasons that different
16 types of networks get carried.

17 And the same kind of thinking, I
18 think, should be factored in when thinking
19 about the programming on distant signals, and
20 is as part of the overall packaging decision.

21 So if we're going to carry that, if
22 we're going to carry WGN, do we need any more
23 sports? Well, if we don't need any more
24 sports, maybe we don't carry WGN.

25 But if we think that additional sports

1 programming is valuable to our subscribers, we
2 will, we will carry WGN.

3 If we think that the news programming
4 on WGN is of interest to our subscribers, maybe
5 we're in an area not too far from the Chicago
6 market, we will want to carry WGN.

7 So I think absolutely those factors
8 should be considered. And that enters into the
9 idea of getting someone with broad knowledge.

10 JUDGE STRICKLER: Thank you.

11 JUDGE BARNETT: Are we at a breaking
12 point here?

13 MR. OLANIRAN: Actually, yes.

14 JUDGE BARNETT: Okay. We will be at
15 recess then until 1:05.

16 (Whereupon, at 12:04 p.m., a lunch recess
17 was taken.)

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1 AFTERNOON SESSION

2 (1:12 p.m.)

3 JUDGE BARNETT: Please be seated and
4 accept my apologies. The late start is all on
5 me.

6 Mr. Olaniran?

7 MR. OLANIRAN: Yes, Your Honor. May I
8 proceed?

9 JUDGE BARNETT: Yes, please.

10 MR. OLANIRAN: Thank you.

11 BY MR. OLANIRAN:

12 Q. Once again, Mr. Trautman, my name is
13 Greg Olaniran from Program Suppliers. And I
14 want to talk to you about -- a little bit about
15 the questionnaire design. And what was your
16 role in the design of the questionnaire
17 that's -- that's -- the questionnaires for 2010
18 through '13 that's been presented in this
19 proceeding?

20 A. I had primary responsibility for the
21 design.

22 Q. You had primary responsibility for
23 revising from the '04-'05 version of it to the
24 current version; is that correct?

25 A. Yes. And as I indicated, we worked

1 with a number of other experts in consultation
2 with them to come up particularly with the
3 WGNA-only questionnaire version.

4 Q. Okay. And you mentioned some experts
5 earlier on in your direct testimony.
6 Specifically which experts did you work on --
7 did you work with on the most current versions
8 of the Bortz survey?

9 A. Dr. Li and Dr. Duncan.

10 Q. And --

11 A. Primarily.

12 Q. I'm sorry.

13 A. Primarily.

14 Q. Okay. And what was the role of each
15 expert? What is Dr. Li -- what was her
16 expertise?

17 A. Well, she was the former head of
18 market research at Cox Communications.

19 Q. Was she a survey research expert?

20 A. Yes, absolutely. That's her primary
21 expertise.

22 Q. Again, what about Dr. Duncan?

23 A. He is an econometrician but also a
24 survey research expert.

25 Q. And was the revised -- were the

1 revised questionnaires or any of the revised
2 questionnaires pilot-tested?

3 A. Yes, in 2009.

4 Q. In 2009.

5 A. Yes.

6 Q. And -- and did you run the pilot in
7 one market or in several different markets?

8 A. We -- we executed a number of pilot
9 questionnaires. We took the 2008 sample and
10 identified the WGN-only systems that had
11 appeared in that sample. And we -- we ran a
12 pilot test against those systems trying to
13 reach those systems. And then when we felt we
14 had sufficient information -- I think we
15 completed about 35 interviews.

16 And when we completed -- when we
17 reached that point, we felt like we had enough
18 information that we could go forward --

19 Q. And what was this --

20 A. -- with the questionnaire.

21 Q. I'm sorry. Did I interrupt you?

22 A. No.

23 Q. Okay. Did you -- what was the sample
24 size for the pilot?

25 A. Well, it was -- I don't recall the

1 initial sample size, but it was all of the
2 WGN-only systems from the 2008 questionnaire.
3 And we didn't attempt to reach a particular
4 response rate. We were simply trying to
5 determine whether the survey was -- was a
6 workable questionnaire design.

7 And so when we had completed about 35
8 of them, listening in on them, et cetera, we
9 felt comfortable that it was very workable.

10 Q. And did you provide any discovery
11 material about the pilot test?

12 A. Yes, we provided the results from the
13 pilot test and -- I can't recall specifically
14 what other information we provided. Certain of
15 the pilot questionnaires ended up being
16 included in the 2009 final survey as well.

17 Q. But you didn't provide the
18 questionnaire you used for the pilot, did you?

19 A. It was in the questionnaire that ended
20 up in the 2009 survey.

21 Q. And so you made some changes from the
22 question -- from the questionnaire you used in
23 the pilot test to the 2010 and beyond. Did you
24 make any changes after the pilot test?

25 A. No.

1 Q. No changes?

2 A. No.

3 Q. You discussed earlier in your direct
4 testimony in your exchange with Mr. Laane about
5 the criticism that Dr. Frankel made of your
6 sample selection process. And his criticism
7 was that you should have -- the universe of
8 systems should have been Form 3 systems that
9 carried distant signals.

10 Do you recall that exchange?

11 A. Yes, I do recall the exchange.

12 Q. And you disagreed with Dr. Frankel on
13 that -- on that point, did you not?

14 A. Yes.

15 Q. And did you -- do you know whether the
16 process that you undertook versus what
17 Dr. Frankel thought you should have -- created
18 any sample bias?

19 A. I don't believe it did. I don't
20 really think changing approach in that regard
21 would have any effect on the sample -- any
22 meaningful effect on the sample design or
23 introduce any bias.

24 Q. Is there a way to test for that?

25 A. I have not tested for that. It's just

1 my judgment because we ultimately end up at
2 essentially the same place in terms of the no
3 distant signals systems.

4 And our approach to exclude the
5 PTV-only and the Canadian-only, he made some
6 adjustments for that, but as I've indicated, I
7 believe he made some errors in calculating
8 that.

9 Q. Well, aside from -- from that issue,
10 my question is focusing on whether or not the
11 process you undertook by starting out with the
12 universe of all Form 3 distant signals as
13 opposed to the distant signals that -- I'm
14 sorry, all Form 3 systems with -- with -- as
15 opposed to starting out with Form 3 systems
16 with distant signals?

17 A. Yes, because ultimately our eligible
18 sample includes only systems with distant
19 signals.

20 MR. OLANIRAN: Your Honor, I am going
21 to be getting into an exhibit that's
22 restricted.

23 JUDGE BARNETT: Okay.

24 MR. OLANIRAN: And it's a JSC -- an
25 exhibit that JSC produced to us in discovery.

1 We also reached agreement with Mr. Laane that
2 Exhibits 6020 through 6029 -- JSC has agreed to
3 stipulate to admission of the exhibits, and
4 unless anyone else has an objection to that, we
5 would move to have those exhibits admitted.

6 JUDGE BARNETT: The numbers again?

7 MR. OLANIRAN: 6020 through 6029
8 included.

9 JUDGE BARNETT: Hearing no other
10 objection then, 6020 through 6029 inclusive are
11 admitted.

12 (Exhibit Numbers 6020 through 6029
13 were marked and received into evidence.)

14 JUDGE BARNETT: If there's anyone in
15 the hearing room who is not permitted to hear
16 restricted information, has not signed an
17 appropriate nondisclosure agreement, and is not
18 here as part of the JSC team, will you please
19 wait outside until we finish with this portion
20 of the hearing.

21 (Whereupon, the trial proceeded in
22 confidential session.)

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1 O P E N S E S S I O N

2 JUDGE BARNETT: Sorry, I interrupted
3 your question, Mr. Olaniran. Go ahead.

4 BY MR. OLANIRAN:

5 Q. If I can remember the question. But I
6 was asking, so the long and the short of it is
7 that your dominant impression signature
8 programming concept applies only to when you're
9 trying to acquire a signal or a channel; is
10 that right? Or a bundle of programs?

11 A. A signal, a channel, a bundle of
12 programs.

13 Q. Okay.

14 A. A smaller bundle of programs, a larger
15 bundle of programs, yes.

16 Q. So if I as a copyright owner wanted to
17 know how your -- your methodology would produce
18 a market value for my program, I have -- that
19 -- that concept is of no use to me; is that
20 fair?

21 A. Well, I have sought here, yes, to seek
22 value with respect to a collection of programs
23 that fall within defined categories and that
24 correspond to the agreed categories in these
25 proceedings. So that's the goal. It's not --

1 it's not to assign value to an individual
2 program.

3 Q. Do you think that's the goal of this
4 proceeding?

5 MR. LAANE: Objection, Your Honor,
6 asking for a legal conclusion.

7 THE WITNESS: That's -- I
8 understand my goal.

9 JUDGE BARNETT: There's an objection
10 pending.

11 THE WITNESS: Sorry.

12 JUDGE BARNETT: To the extent
13 Mr. Trautman is offering a legal opinion, your
14 objection is sustained, but we're not taking
15 his response as legal analysis. He's not an
16 attorney, and he's not a legal expert on the
17 stand. But he has experience in the field. So
18 -- can you ask the question again?

19 BY MR. OLANIRAN:

20 Q. My question is whether or not your
21 understanding of this proceeding is to allocate
22 royalties among individual programs or bundles,
23 collections of programs?

24 A. Well, I understand that my task in
25 helping to find how royalties are allocated in

1 Phase I, so to speak, through my survey is to
2 define relative value in the context of
3 collections of programming that fit within the
4 agreed categories.

5 Q. And how does one test for dominant
6 impression, whether it's accurate or not
7 accurate, whether it's reliable or not?

8 A. Well, I think that in terms of
9 testing, I think what we're -- what we're
10 looking for here is individuals with the
11 experience and knowledge base to have an
12 understanding of the marketplace and to be able
13 to make these allocations as they would be
14 making in the event that they were required to
15 acquire collections of programming of these
16 types.

17 Q. And how are you making the distinction
18 -- when you speak of dominant impression, the
19 cable system respondents are human beings. And
20 I assume they come to the questionnaire with
21 both their personal experiences and their
22 professional experiences.

23 Can we agree on that?

24 A. I think that's fair, although we're
25 clearly instructing them to respond in their

1 capacity as senior executive of the -- of the
2 cable system.

3 Q. So if they are predisposed to a
4 particular type of programming, what you're
5 asking them to respond in a professional
6 capacity, how are you distinguishing between --
7 how do you know when they're doing one or the
8 other with respect to dominant impression?

9 A. Well, we don't know what's in a
10 respondent's mind.

11 Q. Okay.

12 A. In market research, you don't know
13 that. But we are instructing them to respond
14 as to how their system valued, not how they
15 personally would value.

16 Q. Now, I'm going to stay away -- I'm
17 going to try as much as I can to stay away from
18 the -- from restricted material as much as I
19 can. And I want to ask you in general about
20 Questions 2, 3, and 4, without being specific
21 about the questions, at least not yet.

22 So Questions 2 and 3 ask the
23 respondent to conduct ranking exercises,
24 correct?

25 A. Yes.

1 Q. And Question 4 is a valuation
2 exercise; is that right?

3 A. It's a constant sum allocation
4 exercise.

5 Q. Right. And then for -- for this task,
6 the interviewers expected the respondent to
7 have the same market environment in mind when
8 the respondent is responding to these
9 questions; is that fair?

10 A. Yeah. Well, we're asking them to be
11 considering the distant signals that their
12 system carries.

13 Q. No, I'm --

14 A. In the context of their cable system's
15 environment.

16 Q. And it's the same environment for all
17 three questions? That's my question.

18 A. That would be correct, yes.

19 Q. Okay. And the environment you're
20 asking them to consider is the cable network
21 environment; is that right?

22 A. The -- the cable programming
23 environment.

24 Q. The cable programming environment.

25 A. Yes, which includes the cable networks

1 that they carry, as well as the broadcast
2 signals that they carry.

3 Q. You're asking them to -- to -- the
4 interviewer is envisioning that the respondents
5 are thinking about the cable programming
6 environment?

7 A. Well, the interviewer is reading the
8 questionnaire.

9 Q. I understand that. What did the
10 designers of the questionnaire contemplate that
11 the respondents would be thinking about in
12 terms of the market environment?

13 A. Well, we looked to -- we anticipate
14 that the respondents will consider factors that
15 they use in their ordinary course of
16 decision-making regarding collections of
17 programming which we've been talking about at
18 length to make allocations with regard to the
19 collections of programming that are on these
20 distant signals.

21 I don't know how else to answer it.

22 Q. Okay. Let's move on.

23 So in this -- in this hypothetical
24 market, who is the buyer?

25 A. The cable system operator.

1 Q. And what's the cable system buying?

2 A. The cable system is buying collections
3 of programming.

4 Q. So --

5 A. That appeared on the distant signals
6 they carried in the year in question.

7 Q. Okay. As it currently exists, and
8 correct me if I'm wrong, the cable system
9 programming structure consists of broadcast
10 signals, correct?

11 A. Correct.

12 Q. Cable networks?

13 A. Correct.

14 Q. And then some premium channels and up?

15 A. Yes.

16 Q. Okay. And in the universe of cable
17 networks, how many cable networks are out there
18 that you can tell within the U.S.?

19 A. Well, there's several hundred. On the
20 typical cable system, maybe 3- to 400.

21 Q. And so in this hypothetical
22 marketplace when the cable system acquires
23 programming, are they acquiring bundles of
24 programming or are they channels of programming
25 or bundles of programming in some other format?

1 A. Well, channels of programming are
2 bundles of programming.

3 Q. I understand that. So there's
4 collections of programming. Is it -- is the --
5 what is the -- what is the cable system's
6 intention of what to do with the programming
7 once they acquired the bundle in this
8 hypothetical marketplace?

9 A. To use it primarily to attract and
10 retain subscribers.

11 Q. So are they acquiring it in the form
12 of a channel or are they acquiring it to build
13 a channel or exploit it in some other fashion?

14 A. They're acquiring it in the form of a
15 channel to build a package of channels.

16 Q. So --

17 A. That meet the interests of their
18 subscribers -- meet the subscription desires of
19 their existing and potential subscribers.

20 Q. So when you look at this allocation of
21 royalties and you see live professional team
22 sports, you envision that the cable system
23 operator is saying -- is responding to your
24 questionnaire that I would build a channel of
25 professional live team sports; is that -- is

1 that what you're saying?

2 A. No.

3 Q. What are you saying?

4 A. I'm saying -- well, what I'm saying is
5 that they are allocating value to that category
6 of programming which represents a collection of
7 programs, just as they consider in the
8 marketplace the value of the 3- or 400 channels
9 that they have to make decisions about and that
10 they are aware of the license fees that are
11 charged for those channels and they make value
12 judgments about, which are often collections of
13 programming, often collections of programming
14 that are focused in a particular area that is
15 similar to these categories.

16 Q. So who is the seller in this
17 hypothetical marketplace?

18 A. Well, I haven't really defined it. I
19 haven't -- I haven't attempted to define the
20 exact structure of the marketplace, but --

21 Q. Who are they buying the programs from?

22 A. Ultimately, ultimately, the owners of
23 the programs are the sellers.

24 Q. Is that the Copyright Owners?

25 A. There could be an intermediary. There

1 could be a lot of ways the market could be
2 structured.

3 Q. And you haven't thought about that,
4 the seller's side of this?

5 A. Well, the way the question is
6 structured in the context of the agreed
7 categories, it's structured such that the
8 categories represent bundles of programming.

9 Q. I understand that part of it.

10 A. So an aggregated set of programs.

11 Q. My question, though, is if you are
12 hypothesizing that the cable system operators
13 are buying bundles of programming -- I'm at a
14 loss for your response that you haven't
15 contemplated who they would be buying it from?

16 MR. LAANE: Objection, argumentative.

17 THE WITNESS: I don't think that's
18 what I said.

19 MR. GARRETT: Hold on.

20 JUDGE BARNETT: Sustained. Can you
21 rephrase? Or move on.

22 BY MR. OLANIRAN:

23 Q. Does your hypothetical market
24 contemplate at all that the cable system will
25 be buying programs from -- directly from the

1 copyright owner?

2 A. I -- again, I'm asking them to
3 allocate relative value among categories that
4 consist of bundles of programming. That's as
5 far as I've gone in attempting to define the
6 hypothetical market.

7 JUDGE STRICKLER: Excuse me. When you
8 say ask about value they would put on it
9 without identifying a particular seller, are
10 you equating -- to your understanding, is the
11 answer that you're eliciting, eliciting
12 willingness to pay as opposed to any price that
13 a seller might accept?

14 THE WITNESS: Well, I believe that
15 these respondents have an understanding based
16 on their experience in making decisions about
17 all of the different bundles of programming
18 that are on their cable system about the
19 various -- the costs of the various types of
20 programming that comprise those channels. So
21 there is some understanding of the cost
22 framework that exists within the industry
23 certainly, but it is -- it is primarily focused
24 on the buyer's perspective.

25 JUDGE STRICKLER: So you're asking the

1 buyer in essence to sort of make the market --
2 say what -- this is the price I expect the
3 market value to be, not myself as a buyer, but
4 my willingness to pay or what economists would
5 say is my reservation price?

6 THE WITNESS: Yes, but also as we
7 indicate by the warm-up question, Question 3,
8 in the context of what their perception is as
9 to the relative costs that they would -- they
10 would incur.

11 MR. OLANIRAN: May I continue?

12 JUDGE STRICKLER: Sure.

13 BY MR. OLANIRAN:

14 Q. So think about question -- Question 2
15 asks for respondents to rank program categories
16 in order of importance to the system, correct?

17 A. To offer to the -- how important is it
18 to offer to their subscribers.

19 Q. Okay. And Question 3 asks -- is
20 question about how expensive the program -- to
21 rank in order of how expensive the programming
22 is. Is that correct?

23 A. How expensive they believe the
24 programming on those distant signals would be.

25 Q. Okay. And Question 4, as we talked

1 about, is the relative valuation task with
2 regard to the allocation -- allocation of fixed
3 -- amount of fixed dollar of programming among
4 various program categories, right?

5 A. Correct.

6 Q. Okay. And in order for --

7 JUDGE BARNETT: Excuse me.

8 Mr. Trautman, let me just make sure. We are
9 asking these respondents what they think the
10 cost of this category of programming would be
11 in this hypothetical market, but they don't
12 really purchase by category, right? They
13 purchase by channel or station?

14 THE WITNESS: Well -- so I would look
15 at that two ways. In the distant signal
16 market, they purchase or those -- those come --

17 JUDGE BARNETT: As a package.

18 THE WITNESS: As a package.

19 JUDGE BARNETT: Okay.

20 THE WITNESS: In the cable market,
21 they come as a channel, but they often
22 concentrate on a particular genre or type of
23 programming.

24 So are they purchasing a channel?

25 Yes. But are they purchasing a bundle of a

1 particular type of programming? Also yes.

2 JUDGE BARNETT: Okay, thank you.

3 BY MR. OLANIRAN:

4 Q. But in order to perform the tasks that
5 you're asking the respondent to perform in
6 Questions 2, 3, and 4, the following things
7 have to occur: First, they have to listen to
8 the list of signals read by the interviewer as
9 -- as carried by the system. Is that correct?

10 A. Correct.

11 Q. And in the -- in the cable system that
12 we discussed in Exhibit 6020, that channel
13 carried eight signals, did it not?

14 A. That -- that system did, yes.

15 Q. So if we --

16 A. Well, it may have carried more, but
17 that -- we -- we asked them to evaluate
18 signals.

19 Q. Fair enough. And then they have to
20 listen to the number of the signals that were
21 carried. They have to listen to a list of
22 program categories that they are asked to rank.
23 Is that correct?

24 A. That's correct.

25 Q. Okay. And so the interviewer would

1 read the list of program categories to the
2 respondent, and the list of program categories
3 is the list of program categories that the
4 lawyers in this proceeding have agreed to as
5 the categories to be -- to be used, correct?

6 A. Well, we've attempted to conform the
7 categories to be -- generally to be consistent
8 with the agreed categories, but there are also
9 categories that are, in my experience, very
10 familiar in the industry.

11 JUDGE STRICKLER: May I interrupt
12 again?

13 MR. OLANIRAN: Sure.

14 JUDGE STRICKLER: Thank you. I have a
15 question, because I'm not sure of the meaning
16 to certain words in the context of the
17 question. So in Question 2b -- I guess it's
18 the same numbering. I happen to be looking at
19 the one counsel is showing you, the Charter
20 Cable.

21 MR. OLANIRAN: I guess we're getting
22 into restricted the territory.

23 JUDGE STRICKLER: Well, I'm not asking
24 about the answer.

25 MR. OLANIRAN: Oh.

1 JUDGE STRICKLER: I was just asking
2 about the question, not the answers.

3 Question 2b says, "Now I'd like to ask
4 you how important it was for your system to
5 offer certain categories of programming."

6 And then the question, picking up a
7 little bit later, says, "I will read these six
8 categories to you to give you a chance to think
9 about their relative importance." Relative
10 importance.

11 THE WITNESS: Yes.

12 JUDGE STRICKLER: And then Question 4a
13 says, "Now, I would like you to estimate the
14 relative value to your cable system of each
15 category of programming." And then they get a
16 chance to.

17 What is the difference to a -- to a
18 respondent between the relative importance of a
19 particular category and the relative value?

20 THE WITNESS: Well, so that's part of
21 the reason for two warm-up questions and it's
22 also -- so we want them to be thinking in terms
23 of relative importance, which to offer their
24 subscribers and also be thinking on some level
25 about the relative cost of acquiring that

1 programming. So we have --

2 JUDGE STRICKLER: But that's a
3 separate question. That's Question 3, right?

4 THE WITNESS: It is. And I think both
5 of those feed in ultimately to relative value.

6 JUDGE STRICKLER: How do they feed
7 into -- how do those two feed into relative
8 value? I don't understand.

9 THE WITNESS: Well, in terms of
10 getting the respondent thinking about a couple
11 of different aspects that contribute to
12 relative value.

13 JUDGE STRICKLER: But value is a
14 demand concept. I value something, a buyer
15 values something because it has an importance,
16 it's a -- there's something positive about it
17 that makes it important to value. The cost
18 becomes something you weigh against it.

19 But Question 4, again, asks for
20 relative value.

21 THE WITNESS: That's correct, in the
22 context of a programming budget, so --

23 JUDGE STRICKLER: Which is why I asked
24 -- well, relative to the number of points, to
25 the 100 points that you have --

1 THE WITNESS: Yes.

2 JUDGE STRICKLER: -- to allocate in
3 the survey. But -- but -- maybe you answered
4 it and maybe I just don't get it, but what's
5 the difference between the meaning of the word
6 "important" in Question 2b and the question of
7 value in Question 4a?

8 A. Well, I think both are getting at
9 similar things. And both, in terms of
10 relative, are relative -- relative attribution
11 questions. One is a ranking question, and one
12 is we're seeking to get a percentage
13 allocation.

14 But they are getting at similar
15 concepts, I agree with you.

16 JUDGE STRICKLER: So one is sort of --
17 question -- it doesn't seem like it addresses
18 cost at all. It's saying -- it's just
19 addressing -- Question 4 is addressing how much
20 value to put on it, and Question 2b is just
21 ranking it compared to others without putting a
22 price on it, like do I -- do I prefer chicken
23 or fish or beef and I can rank them, but
24 Question 4b says: If I had \$100 to spend on
25 them or 100 points to spend on them, how many

1 -- how much money would I spend on each?

2 THE WITNESS: That's correct, yes.

3 JUDGE STRICKLER: Okay, thank you.

4 Please, go ahead.

5 BY MR. OLANIRAN:

6 Q. I was going through the list of steps
7 that a respondent had to take to respond to
8 Questions 2, 3, and 4. And like I say, the
9 first was the -- understanding the list of
10 program categories to rank -- I'm sorry,
11 they're listening to the list of signals, which
12 in the case of Exhibit 6020, there were eight
13 signals. And then listening to the list of
14 program categories to rank.

15 And then the ultimate ranking task
16 itself, you have to recall all of the content
17 on the eight signals, in the case of
18 Exhibit 6020, and then you had to exclude from
19 consideration from all of the content network
20 programming; ABC, CBS, and NBC, correct?

21 A. Well, I think you're mischaracterizing
22 the process to a certain degree. There are
23 steps involved, certainly, but as I've
24 indicated, we're focusing on a dominant
25 impression concept and recognizing that

1 signature programming drives value.

2 So I think you're making it sound a
3 bit more complicated than it is. And it's --
4 it's also a process that is, you know,
5 something that these folks are considering in
6 terms of value decisions about programming in
7 their everyday -- in their everyday business.

8 Q. Did they not have to know the number
9 of signals that you're asking them to consider
10 to -- to conduct a particular task?

11 A. Sure. We're actually -- we're helping
12 them, I think, to focus their decision-making
13 process by giving them specific signals and --
14 and instructing them to focus only on the
15 programming on those signals.

16 Q. Okay. So we're in agreement that they
17 have to consider those signals. They also --

18 A. Well, we're not -- we're not in
19 agreement that they have to consider. I would
20 argue that we're helping them by giving them
21 information as to what they should consider.

22 Q. Do they have any interest in
23 understanding the signals that they carry for
24 the purpose of conducting the task that you're
25 asking them to conduct?

1 A. I'm not sure I understand your
2 question.

3 Q. Do you or do you not want them to
4 consider the list of signals that you just read
5 to -- that the interviewer just read to them in
6 order to perform the task that you're asking
7 them to?

8 A. Yes. I'm giving them the list of
9 signals so that they can consider the
10 programming that's on those signals and only
11 that programming.

12 Q. Okay. You're also asking them to
13 extricate from the aggregate content network
14 programming from ABC, CBS, and NBC, correct?

15 A. In the instances where network signals
16 are carried.

17 Q. Okay. And then, once they do that in
18 this mentor process, then I will have to
19 organize the programming into these program
20 categories, correct?

21 A. Well I'm not sure they have to
22 organize it. We provide the categories to them
23 and ask for relative rankings based on those
24 categories through the course of the first two
25 questions to get them thinking about the

1 programming that is on those stations and the
2 categories that are on those stations.

3 Q. I understand that part.

4 A. So, again, we're assisting them.

5 We're not requiring something of them, I would
6 argue. We're assisting them in their efforts
7 to consider that programming.

8 Q. Well, if they're not organizing --
9 reorganizing the content that they receive on a
10 station-by-station basis into the program
11 categories that you've just laid out to them,
12 how do they know -- how do they know what to do
13 to perform the task that you're asking them to
14 perform?

15 A. No, I understand what you're saying.
16 I think these are familiar categories. And I
17 think, ultimately, yes, I would agree that they
18 are organizing them into those categories.

19 Q. Okay. And they do --

20 A. At the --

21 Q. I'm sorry.

22 A. At the signature programming dominant
23 impression level.

24 Q. And they are performing this task
25 within the span of an average ten minutes?

1 A. Well, they're performing this task 365
2 days a year in terms of evaluating programming
3 that falls within categories and consists --
4 and comes in bundles.

5 But in terms of the survey, they are
6 considering the specific questions we've posed
7 to them in a span of about ten minutes.

8 Q. Okay. And this respondent in
9 Exhibit 6020, the vast majority of the
10 respondents in 2010 are doing this exercise
11 within ten minutes, in 2012?

12 A. In -- in -- in the year -- for the
13 year 2010 survey, that's accurate.

14 Q. Okay. Can we talk about Question 2b?
15 And again I'm going to try to stay within the
16 question itself, as opposed to specific
17 restricted information.

18 So in Question 2b, this is the
19 importance ranking, correct, of the program
20 categories?

21 A. Correct.

22 Q. And this is the first time -- this is
23 the first time for this question with the Bortz
24 survey, correct?

25 A. We had this question in 2009.

1 Q. Okay. And the purpose of this is --
2 of this question is to have the respondent tell
3 the interviewer how important it was for the
4 system to offer certain categories of
5 programming they carried in 2010, right?

6 A. Yes.

7 Q. And to do so, the respondent had to go
8 through the exercise we just -- we just talk
9 about, which is knowing the signals, excluding
10 network programming, and then organizing the
11 programming in a manner -- in a ranking order;
12 is that correct?

13 A. Ultimately, yes.

14 Q. Okay. And for Question 2b, this is
15 the first time that the respondent is hearing
16 the list of program categories, right?

17 A. Yes, it is.

18 Q. And no definitions of the programming
19 are provided to the respondent, are they?

20 A. The category description constitutes
21 the definition.

22 Q. I see. Let's look at Question 3.
23 This also is a new question for the Bortz
24 survey, at least as presented to -- for the
25 royalty distribution proceedings; is that

1 right?

2 A. Correct.

3 Q. Okay. And so in Question 3, the
4 interviewer seeks to know how expensive it
5 would have been for respondent's system to
6 acquire non-network programming on the
7 broadcast stations identified by the
8 interviewer, if respondent's system had to
9 purchase that programming in the marketplace.

10 I think I read that verbatim from the
11 question.

12 A. Yes.

13 Q. And, again, in order to get to this
14 ranking task, the respondent again had to go
15 through the steps that we talked about for --
16 excuse me -- for Question 2b; is that right?

17 A. Yes, which they just went through.

18 Q. So the question asks the respondent to
19 determine how expensive it would have been for
20 the system to acquire non-network programming,
21 and by that tense, is it fair to say that the
22 interviewer is asking the respondent about how
23 expensive the programming would have been in
24 2010?

25 A. Yes. And we're not asking them to

1 determine that. We're asking them to rank the
2 categories.

3 Q. I'm sorry, rank the categories. Okay.

4 And you are not -- you have read them,
5 the list of programming, the list of signals
6 that are at issue and asked them to organize a
7 rank, how expensive in order -- rank the
8 programming categories in order of how
9 expensive, right?

10 A. Yes.

11 Q. So do you know whether or not, in
12 responding to this particular question or
13 actually in Question 2, the respondents are
14 aware of distant signal retransmission or not?

15 A. We -- we actually specifically do not
16 want to alert them to the fact that this is
17 concerning copyright issues or copyright
18 royalties.

19 Q. Even though the signals that you are
20 asking them to talk to you about were carried
21 subject to the compulsory license statute?

22 A. Well, they were carried subject to
23 that, but we don't want them to be thinking
24 about the royalties that they pay when -- or we
25 don't want them necessarily to be thinking

1 about the royalties that they pay or that
2 structure when they're responding to this
3 question.

4 Q. Do you know whether they're not
5 thinking about it?

6 A. We can't say for sure, but we don't --
7 we don't do what Horowitz did and alert them to
8 the fact that these are distant signals and use
9 terms that would suggest to them that it's part
10 of the process.

11 Q. And what would be wrong with using
12 terms that would suggest it would be part of
13 the process?

14 A. Well, because I think we want them to
15 be thinking about a marketplace transaction.

16 Q. Well, that would have been -- the
17 process -- the marketplace that exists for
18 them -- that existed for them in 2010 was a
19 marketplace that regulated distant
20 retransmissions, is it not?

21 A. Right. We're trying to get at
22 relative value in a free marketplace.

23 Q. And if -- if they are as knowledgeable
24 as you said they are, wouldn't they understand
25 -- how are they making a distinction between

1 retransmission of distant signals subject to
2 the compulsion license versus non-regulated
3 retransmission of -- of signals or channels?

4 A. We're not asking them to make that
5 distinction.

6 Q. So you don't -- it doesn't matter to
7 your survey that they are thinking about one or
8 the other or both?

9 A. Again, we're not asking them to make a
10 distinction specific to the regulatory
11 framework.

12 Q. I know you're not asking them. My
13 question is whether or not it matters to the
14 results of your survey whether they were
15 thinking about one or the other or both?

16 A. I haven't assessed whether it matters.

17 JUDGE STRICKLER: I have a question,
18 still sticking with Question 2b for you,
19 Mr. Trautman.

20 The question, again, begins: "Now,
21 I'd like to ask you how important it was for
22 your system to offer certain categories of
23 programming that are carried by these
24 stations."

25 Now, it doesn't indicate whether they

1 should be thinking that they already carry
2 stations or air programs on other channels,
3 including network channels that are in these
4 categories as well, which of course exist.
5 Those are the programs, movies sitcoms, live
6 sports, what have you.

7 And I think you answered this morning,
8 you said that they -- that you -- perhaps you
9 said, correct me if I'm wrong, that you
10 anticipate that the respondents would figure
11 out which were the best types of programs among
12 these seven categories to round out their
13 schedules, sort of which ones complement what
14 they already have.

15 But the question doesn't ask that one
16 way or the other. So am I right that the
17 respondent, therefore -- we just don't know --
18 as I think you also said this afternoon, we
19 don't know what's in the respondent's head,
20 whether they are figuring out whether these
21 program types, these categories that are on the
22 retransmitted stations are rounding out what
23 they already have or they're just thinking of
24 what would happen if you were starting out
25 programming, whether it pays to begin with live

1 -- and pay more for live sports or for sitcoms
2 or what have you. They're free to -- to
3 approach the problem from either of those
4 perspectives; is that your understanding?

5 THE WITNESS: We don't instruct them
6 on that issue. I think that it's -- it's -- it
7 would be my expectation that they would respond
8 at least typically in the context of the
9 factors that led them to carry these distant
10 signals, which would include consideration of
11 those broader issues.

12 JUDGE STRICKLER: So there's no way of
13 knowing, when they respond, whether they're
14 thinking in terms of, well, we already have
15 network TV on our cable system, we already have
16 CNN, we already have ESPN, we already have HBO
17 as a premium offer, we have all these other
18 things; how valuable are these other types of
19 programs given what we already have, what's
20 already arrived on our programming?

21 You don't know if they're thinking of
22 it that way or whether or not they're thinking
23 about it in terms of, hey, let's -- let's start
24 a cable system and let's begin with what's the
25 best type of programming, and then they answer

1 the question with that in mind?

2 THE WITNESS: Well, we can't in that
3 context know what's in the respondent's mind
4 for certain, but I -- again, I anticipate that
5 they are thinking about it in the context of
6 their cable system and how these signals and
7 how the programming on these signals is or is
8 not important to offer to their subscribers.

9 JUDGE STRICKLER: Given what they
10 already have in the system?

11 THE WITNESS: Given what they already
12 have.

13 JUDGE STRICKLER: Well, if that's the
14 case, wouldn't the question better be asked,
15 the question that I quoted before -- "Now, I'd
16 like to ask you how important it was for your
17 system to offer" -- and instead shouldn't it
18 have said something like: How important it was
19 for your system to offer these stations because
20 they offer certain categories of programs?
21 Rather than asking them to -- how important it
22 was for their system to offer certain
23 categories of programs that are carried by
24 these stations?

25 Because if, as you're saying, you

1 anticipate they were thinking, all right, I
2 already have the architecture of a system that
3 has all these various programming, now what
4 stations would I like to retransmit distantly
5 because they have various bundles, you would
6 want to be looking at the stations and the
7 bundles they have, rather than just the types
8 of programs, wouldn't you?

9 THE WITNESS: Well, I mean, I could
10 certainly give some thought to the possibility
11 of how the -- the question could be rephrased,
12 but what we're trying to elicit from here, from
13 here is a response from the respondent as to
14 how the types of programming on those signals
15 played in to important -- how the types of
16 programming on those signals was important or
17 not in terms of offering to their subscribers
18 and specific to the programming that was
19 actually on those signals.

20 JUDGE STRICKLER: Well, the way the
21 sentence reads -- again, I don't want to
22 belabor this -- this might be the last time I
23 repeat the same quote from the question, to be:
24 "Now, I'd like to ask you" -- as the quote
25 goes, "Now, I'd like to ask you how important

1 it was for your system to offer certain
2 categories of programming that are carried by
3 these stations."

4 Don't you find that a little ambiguous
5 in the sense that you're asking them how
6 important it was for your system to offer
7 certain categories of programming? Let's just
8 stop right there. So it has got to be
9 categories of programming, and which categories
10 are we talking about? The ones that are
11 carried by these stations.

12 So the -- that last phrase -- clause,
13 that clause in the sentence just tells you
14 where to find the categories. It doesn't tell
15 you that they are important because they are in
16 the stations. It just tells you, when you look
17 at these stations, you'll find the categories.
18 And now we want to know how important they are
19 to you. And that's not really the task at hand
20 now, is it?

21 THE WITNESS: Well, I take your point,
22 but subsequent to that, in the question we do
23 focus them in on it being the programming
24 that's on those broadcast stations.

25 JUDGE STRICKLER: Well, you ask them

1 to -- you specifically say exclude the
2 broadcast stations. But you don't say
3 specifically exclude other cable stations. So
4 you don't say specifically exclude ESPN or
5 exclude CNN or anything like that?

6 THE WITNESS: That's -- well, so there
7 is ABC, CBS, and NBC network programming on
8 some of these stations. It's a -- it's a
9 sub-component of the programming on some of
10 these stations.

11 So that's what we're asking them to
12 exclude.

13 JUDGE STRICKLER: Thank you.

14 BY MR. OLANIRAN:

15 Q. So continuing with 2b -- or not to
16 be --

17 (Laughter.)

18 JUDGE STRICKLER: You know anybody was
19 thinking that, but you're the only one who said
20 it out loud.

21 MR. OLANIRAN: It was low-hanging
22 fruit. I'm sorry.

23 (Laughter.)

24 BY MR. OLANIRAN:

25 Q. Mr. Trautman, I want to go back to

1 Question 3. And you start the question -- and
2 if you'll please look at the language so you
3 can follow my question. You start the question
4 by telling the respondent that the question
5 would be about how expensive purchasing the
6 programming directly in the marketplace would
7 have been. And then in the next sentence, the
8 question then refers to relative costs of seven
9 programming categories.

10 Do you see that?

11 A. Yes.

12 Q. And then in the next sentence, you go
13 back to ranking the program categories in order
14 of how expensive. And then in the following
15 sentence, you refer to a cost ranking exercise
16 that was about to happen.

17 So my question is are you equating all
18 these terms to mean the same thing?

19 A. In terms of this question, I believe
20 those are interchangeable terms, yes.

21 Q. And -- and you believe that the
22 respondent somehow understands four -- three
23 different terms to mean the same thing?

24 MR. LAANE: Objection, argumentative.

25 JUDGE BARNETT: Overruled.

1 MR. OLANIRAN: Thank you.

2 THE WITNESS: Well, I believe it's two
3 different terms, but yes.

4 BY MR. OLANIRAN:

5 Q. What are you -- are you asking them
6 about how expensive or are you asking them
7 about relative cost in terms of are you asking
8 them to rank the programming categories?

9 A. Well, I think we're asking them about
10 both, and I think the terms are interchangeable
11 and we're asking them to rank relative expense
12 or cost.

13 Q. So expense and cost mean the same
14 thing to you?

15 A. In the context of this question, yes.

16 Q. And you don't -- you don't think that
17 the word "cost," which is used there as a noun,
18 and the adjective "expensive" are two different
19 concepts?

20 A. Not in the context of this question,
21 no.

22 Q. Okay.

23 MR. OLANIRAN: Your Honor, I know we
24 usually have an afternoon break. I don't know
25 if this is a good time because this is a --

1 this would be a good clean break for me. I can
2 continue.

3 JUDGE BARNETT: Go ahead. I was
4 thinking of about 2:45 we would take our break.

5 MR. OLANIRAN: That's fine. Thank
6 you.

7 BY MR. OLANIRAN:

8 Q. Mr. Trautman, let's move to the
9 constant sum questions, which is Question 4a.

10 A. All right. I'm there.

11 Q. And the respondent in this question
12 was tasked with making relative valuation of
13 the same program categories that you had
14 mentioned in Questions 2 and 3, correct?

15 A. Correct.

16 Q. And it's the -- the aggregate -- the
17 relative valuation results in this constant sum
18 question, subject to some modifications that
19 you do later on, serves as the basis for the
20 proposal by Joint Sports Claimants, correct?

21 A. Correct.

22 Q. And, again, for this exercise, you
23 required -- the respondent was required to go
24 through the steps that we talked about earlier,
25 remembering the signals, taking out ABC, CBS,

1 and NBC, and then reorganizing the programming
2 into the program categories that they have to
3 -- that the allocation would have to be based
4 on, right?

5 A. Correct.

6 Q. Okay. And the question opens with the
7 statement that you would like the respondent to
8 estimate the relative value to the respondent's
9 system of programming broadcasts by the signals
10 identified, that you had been identifying all
11 along that were carried in 2010.

12 Now, in the opening statement, you
13 used the phrase "relative value," not "relative
14 marketplace value." Is it fair to say that you
15 intended for the respondent to contemplate a
16 particular marketplace?

17 A. I intended them to allocate relative
18 value among the programming categories.

19 Q. Did you have -- did you want them to
20 be thinking of a particular type of marketplace
21 in making that allocation?

22 A. No, I wanted them to respond based on
23 their experience and judgment --

24 Q. Did you --

25 A. -- as to the marketplace.

1 Q. Okay, I'm sorry. I'm sorry I
2 interrupted you. Please finish.

3 A. As to the marketplace.

4 Q. Okay. And it didn't matter to you --
5 strike that.

6 The marketplace that they had in mind
7 in making their allocations to the program
8 category, did that matter to you as an
9 interviewer?

10 A. I'm -- I'm trying to get them to
11 allocate relative value based on their
12 experience and judgment as to the programming
13 on these stations.

14 Q. Do you know --

15 A. So I don't -- I'm allowing them the
16 free will, so to speak, to think about that
17 relative value allocation as they see fit in
18 terms of how it is appropriate for their cable
19 system.

20 Q. As a questionnaire designer, do you --
21 the ultimate objective of your survey is to
22 have an allocation that reflected marketplace
23 value of the program categories; is that fair
24 to say?

25 A. Yes. I'm not sure that you could

1 really allocate relative value not in a
2 marketplace, so I think that's kind of
3 implicit.

4 Q. So my question is when they were
5 allocating value to these different program
6 categories, was it important to you, the
7 designer of the question who intended to use
8 this as -- who intended to use the results as
9 reflective of marketplace value, was it
10 important to you --

11 A. Yes, it was.

12 Q. -- that -- I didn't finish my
13 question. Was it important to you that the
14 respondents be thinking about a particular type
15 of market?

16 A. Not a particular type of market, but
17 relative value.

18 JUDGE STRICKLER: Did you also think
19 that they should be contemplating market price
20 as well, how much it would cost to get live
21 sports programming, how much it would cost to
22 be able to acquire movies, et cetera?

23 THE WITNESS: Well, that was the -- we
24 -- we wanted them to go beyond the mere
25 consideration of attracting and retaining

1 subscribers to consider broader issues related
2 to relative market value and -- and so one of
3 the reasons for introducing the third question
4 was to think -- get them to also be thinking
5 about such factors as -- as cost, yes.

6 JUDGE STRICKLER: So in that sense,
7 it's sort of a net value to them, right?
8 Because there's the positive value of, although
9 you say you weren't testing for this, how to
10 increase their subscribers, perhaps how they
11 will increase their viewers, but subscribers is
12 the point of the realm for a cable company, but
13 that's only, you know, one of the -- to mix
14 metaphors, that's only one blade of the
15 scissors because the other is the cost too.

16 So you wanted them to think both in
17 terms of how much revenue they could get in
18 because it was -- had value in that regard
19 because you get more subscribers if it was a
20 popular type of program category, but if it's a
21 very expensive one, I mean, you might want --
22 you might want the Rose Bowl, I know that's a
23 network game, it's a bad example, but maybe --

24 THE WITNESS: Sure.

25 JUDGE STRICKLER: Do they still do the

1 Astro-Bluebonnet Bowl? I don't know. That one
2 sounds syndicated to me.

3 THE WITNESS: I think you're a little
4 behind the curve on that one.

5 JUDGE STRICKLER: I'm way behind the
6 curve. I'm sure of that.

7 (Laughter.)

8 JUDGE STRICKLER: But the -- but it's
9 all well and good that you say, well, we can
10 get X thousands of dollars in new subscriptions
11 because we're carrying these lesser bowl games
12 that aren't anywhere else, but if it costs you
13 more than you're going to gain, it really has
14 no -- it really has no value to you at all,
15 now, does it?

16 THE WITNESS: Well, we were thinking
17 about costs more in the context of how it would
18 affect your sort of budget allocation in terms
19 of this Question 4a, so not in terms of
20 necessarily trying to turn the relative value
21 question into a relative profitability
22 question.

23 JUDGE STRICKLER: But that is -- well,
24 because you're not turning it into a
25 profitability question, I understand that, and

1 appreciate it, it's not a market value question
2 any longer, right? If it ever was supposed to
3 be, which was counsel's question that started
4 this particular line of questioning, the
5 difference between market value and relative
6 value.

7 THE WITNESS: No, no --

8 JUDGE STRICKLER: If you're not
9 considering profit, you're not considering
10 market, because what does a market exist for
11 sellers and for buyers but to try to gain
12 profit?

13 THE WITNESS: Well, no. Let me
14 rephrase that.

15 I understood you to be saying a
16 different thing in terms of cost, but, yes,
17 you're actually correct, and I misstated, that
18 we are -- we are thinking in terms of the
19 relative value to their cable system on a broad
20 level and, therefore, we are encouraging them
21 to think about what you just said.

22 So, I'm sorry, I misstated.

23 JUDGE STRICKLER: I appreciate that.
24 The questions are hard off the top of your head
25 so it's probably a confusing question so thank

1 you for trying to work through it.

2 But there's no prices, there's no
3 explicit pricing or implicit pricing in --
4 given in the instructions in Question 4a, so
5 there's a ranking, for example, someone could
6 rank live sports Number 1, but we don't know
7 what that respondent thinks in terms of the
8 pricing of the sports. So it's -- it has value
9 because you think people want to watch or
10 people are going to subscribe, more
11 importantly, to a -- to a cable system, right?
12 And that's the value, but you don't want
13 subscribers to add revenue to you if the costs
14 are going to be greater than the revenue. So I
15 don't understand how -- how this could even be
16 remotely be considered to have market value.

17 It's -- when I go back to that
18 demand/supply difference, it just seems like
19 it's how much would you be willing to pay, how
20 much value it gives you on the demand side. It
21 doesn't tell you anything about whether you
22 would actually go ahead and do it.

23 THE WITNESS: I -- I agree that it's
24 primarily a demand judgment.

25 JUDGE STRICKLER: Thank you.

1 BY MR. OLANIRAN:

2 Q. I just wanted to clarify something
3 else. Did you -- I took it you intended for
4 the respondents to consider the same program
5 categories you used in Question 2 and 3 for
6 Question 4; is that right?

7 A. Yes.

8 Q. So if we took the syndicated shows
9 program category, if you look at Question 2,
10 which is the first time they're hearing about
11 this, they hear the label syndicated category
12 -- syndicated show, it's labeled syndicated
13 shows, series, and specials.

14 Do you see that?

15 A. Yes.

16 Q. And then you go to Question 3, it's
17 labeled the same thing, syndicated shows,
18 series, and specials. Do you see that?

19 A. Correct.

20 Q. And then in Question 4 you have
21 syndicated shows, series, and special. And for
22 the first time you elaborate on that to say
23 "distributed to more than one television
24 station and broadcast during 2010 by the
25 commercial stations I listed." Wouldn't that

1 be confusing to the respondent?

2 A. I don't believe so. We've told them
3 previously on a number of occasions that we're
4 talking about the programming that was carried
5 by these stations during 2010 and that we were
6 talking about specific commercial stations, so
7 I don't think that that's an issue and I think
8 that the "distributed to more than one
9 television station" is just a clarification
10 with respect to syndicated shows, series, and
11 specials.

12 Q. And why wouldn't that clarification
13 have occurred earlier, in the beginning -- at
14 the beginning of the question?

15 A. In Questions 2 and 3?

16 Q. Yes.

17 A. It could have.

18 Q. It would have been better, would it
19 not have?

20 A. It would have been more descriptive, I
21 would agree.

22 Q. It would have been better? Right?

23 A. I think it's -- again, I don't
24 necessarily think better in the context of a
25 rank order question. I don't think it was

1 necessary.

2 Q. But the rank order question would
3 actually warm up to the ultimate question that
4 you were going to ask the respondents, correct?

5 A. Yes, they were.

6 Q. So you used the same phrase in the
7 first two questions, and then when you get to
8 the last question -- the most important
9 question, I think you would say, correct?

10 A. Yes.

11 JUDGE STRICKLER: You're referring to
12 4a now?

13 MR. OLANIRAN: Yes.

14 JUDGE STRICKLER: Thank you.

15 BY MR. OLANIRAN:

16 Q. And you're at the phrase "produced by
17 or for any commercial stations." Right?

18 A. Well, not in the syndicated category.

19 Q. I'm sorry. Distributed to more than
20 one television station.

21 A. Yes.

22 Q. You don't think a respondent, for
23 example, could have looked -- heard that phrase
24 and said, wow, maybe there's some other type of
25 distribution that did not involve the questions

1 that are asked in 2 and 3?

2 A. I -- I don't see that happening.

3 Q. And that's based on what?

4 A. My experience.

5 Q. What specific experience?

6 A. I just -- I don't think that's a
7 meaningful alteration in terms of the question.

8 Q. How do you test whether there's
9 confusion in responding to Question 4a versus
10 Questions 2 and 3 in terms of how the
11 respondent is -- understood that category?

12 A. I haven't tested for that.

13 Q. Let's look at the news --

14 JUDGE STRICKLER: Just before you go
15 there, I want to stick with that question, that
16 description, Mr. Olaniran, about syndicated
17 shows, series, and specials that counsel was
18 asking you about. It says, the phrase that he
19 was looking at, "distributed to more than one
20 television station and" -- "and broadcast
21 during 2012 by the commercial stations I
22 listed."

23 Let's take that conjunctive one
24 portion at a time. "Distributed to more than
25 one television station."

1 THE WITNESS: Yes.

2 JUDGE STRICKLER: Was that intended to
3 mean more than just -- if the respondent had
4 retransmitted six stations on the cable system,
5 is that making reference to one of those six or
6 distributed to just more than one -- in other
7 words, it could have been one of the ones the
8 -- the respondent retransmitted and some other
9 station?

10 A. Well, consistent with the agreed
11 categories, it's intended to reflect
12 distributed more broadly than just the station
13 on which it appeared.

14 JUDGE STRICKLER: Okay. So if there
15 were stations 1 through 6 that were
16 retransmitted by this particular respondent's
17 company, but it was -- but this particular
18 syndicated show was retransmitted on -- on --
19 retransmitted station number 3 and that was the
20 only one and also retransmitted on station
21 number 46, that was not retransmitted by this
22 company, would that qualify as falling within
23 that definition? Or no?

24 THE WITNESS: Well, again, this is
25 intended to be a clarification that the

1 syndicated shows, series, and specials includes
2 programming that was distributed to multiple
3 television stations.

4 JUDGE STRICKLER: Multiple television
5 stations that this respondent's company
6 retransmitted or just multiple stations?

7 THE WITNESS: Just multiple stations.

8 JUDGE STRICKLER: How would the
9 respondent know that?

10 THE WITNESS: I think in my experience
11 the respondents are familiar with the concept
12 of syndicated programming and understand the
13 difference between that and what I'll refer to
14 as local programming consistent with news and
15 public affairs as -- as defined below in the
16 other category.

17 JUDGE STRICKLER: But the question
18 itself suggests that there are certain
19 syndicated shows that are not distributed to
20 more than one television station or you
21 wouldn't have to give them that extra
22 information, would you?

23 THE WITNESS: Well, I'm not sure that
24 the extra information was necessary. I'm -- I
25 believe, you know, extra information was

1 provided to be as consistent with the agreed
2 categories as possible.

3 JUDGE STRICKLER: Thank you.

4 BY MR. OLANIRAN:

5 Q. Mr. Trautman, isn't it generally
6 accepted survey practice to use consistent
7 language throughout a survey questionnaire when
8 you intend for that language to mean the same
9 thing across the questionnaire?

10 A. Yes. And I think this survey meets
11 that standard.

12 Q. Okay. Let's look at the news
13 category, if you will. If you go to question
14 -- if you go to Question 2a, you labeled what I
15 would call the news category in Question 2b as
16 "news and other station-produced programs."

17 Do you see that?

18 A. Yes.

19 Q. Then in Question 3, you call it "news
20 and other station-produced program." Which is
21 the same thing as Question 2.

22 And then when you get to Question 4a,
23 you call it "news and public affairs programs."
24 You meant for all three questions to -- to
25 refer to what I call the news program, correct?

1 A. Yes, to the news -- news and public
2 affairs programs produced by or for any of the
3 commercial stations listed.

4 Q. And you still considered this labeling
5 consistent with generally accepted survey
6 practice?

7 A. I consider the first two question
8 references to be a shorthand version of the
9 expression in Question 4.

10 Q. So your respondents would know that
11 when you say "news and public affairs program"
12 you intended to say "news and other
13 station-produced programs," right?

14 A. I don't think that this expression
15 would change the perception in the respondent's
16 mind of what we were talking about.

17 Q. You also added in that last question,
18 after "news and public affairs program,"
19 "produced by or for any of the commercial
20 stations," which description is not part of the
21 first two questions.

22 A. Well, it is, other station-produced
23 programs.

24 Q. You don't think that the label in 4a
25 is more descriptive than the earlier labels?

1 A. It is more descriptive. I indicated
2 that the first two were a shorthand version.

3 Q. The language is not -- the language of
4 4 is not consistent on its face with 2 and 3?

5 A. I think a shorthand version is not
6 identical, I agree.

7 Q. Okay.

8 JUDGE STRICKLER: So why the
9 difference? Why the difference in verbiage?

10 THE WITNESS: Well, again, we're
11 trying as much as we can to keep the
12 definitions simple and straightforward in the
13 minds of respondents.

14 And in the ranking questions, again,
15 we're -- those are warm-up questions. We're
16 trying to get more general perceptions. And we
17 want to -- our determination was to add a bit
18 more clarity or just some reminders in the key
19 relative -- in the key constant sum question.

20 JUDGE STRICKLER: Thank you.

21 JUDGE BARNETT: Is this a good place?

22 MR. OLANIRAN: Just as good as any.

23 JUDGE BARNETT: Okay. We'll be at
24 recess for 15 minutes.

25 MR. GARRETT: Your Honor, I'm sorry,

1 before we break, we have another witness who is
2 prepared to go on today back at our offices.
3 In canvassing folks on the amount of
4 cross-examination, I don't think there will be
5 time to put him on today, but I wanted to
6 confirm that because I can send him back to
7 Colorado for the long weekend otherwise.

8 JUDGE BARNETT: Messrs. Satterfield,
9 Cosentino, will you have cross-examination for
10 Mr. Trautman?

11 MR. SATTERFIELD: Probably not very
12 much at all, if at all.

13 JUDGE BARNETT: Mr. Stewart?

14 MR. STEWART: Just a minute.

15 JUDGE BARNETT: A minute? Come on.

16 MR. STEWART: Two.

17 (Laughter.)

18 JUDGE BARNETT: Messrs. Lutzker,
19 MacLean?

20 MR. LUTZKER: Yes, we will have at
21 least probably 20 minutes.

22 JUDGE BARNETT: Okay. And Mr. Dove?

23 MR. DOVE: We're thinking maybe an
24 hour and a half.

25 JUDGE BARNETT: And in that case,

1 Mr. Garrett, I would say get that fellow to the
2 airport.

3 (Laughter.)

4 MR. GARRETT: He may already be there,
5 Your Honor.

6 JUDGE BARNETT: Okay. Thank you. 15
7 minutes.

8 (A recess was taken at 2:50p.m.,
9 after which the trial resumed at 3:10 p.m.)

10 JUDGE BARNETT: Please be seated.

11 BY MR. OLANIRAN:

12 Q. Mr. Trautman, let's continue with our
13 discussion about question 4a. In the -- in the
14 middle paragraph on question 4a, do you have
15 that in front of you, by the way?

16 A. I do, yes.

17 Q. Okay. In the middle paragraph you ask
18 the respondent to assume that his or her system
19 spent a fixed dollar amount in 2010 to acquire
20 all of the non-network programming actually
21 broadcast in 2010. Right?

22 A. Yes.

23 Q. Okay. And then you ask what
24 percentage, if any, of the fixed dollar amount
25 would your system have spent for each category

1 of programming. Right?

2 A. Yes.

3 Q. In the case of -- and you said earlier
4 that your respondents, after qualification, you
5 expect them to have knowledge about the content
6 they carry, correct?

7 A. Yes.

8 Q. They understand prices, correct?

9 A. Yes.

10 Q. And they understand the cable
11 programming market, correct?

12 A. Correct.

13 Q. And that they understand expenditures,
14 correct?

15 A. Expenditures as in --

16 Q. Programming expenditures, I'm sorry.

17 A. Yes, to the extent that is different
18 from pricing.

19 Q. Well, you expect them to be
20 knowledgeable about the system's programming
21 expenditures, right?

22 A. Oh, yes.

23 Q. Okay. So by the time that -- in the
24 case of the 2010 survey, which began in 2011
25 and went into 2012, by the time that you are

1 asking these respondents -- the interviewers
2 interviewing the respondents about 2010, the
3 respondents already know what they actually
4 spent on programming in 2010, don't they?

5 A. Yes.

6 Q. So when you are asking them, when you
7 are asking the respondents about how much he or
8 she, the system -- how much would your system
9 have spent when the respondent already, the
10 knowledgeable respondent already knows what the
11 system spent with regard to programming, how
12 was the respondent making that distinction?

13 A. I'm not asking them to make that
14 distinction. This paragraph is sort of the
15 constant sum -- it establishes the constant sum
16 parameter that we're looking for a fixed dollar
17 amount and we're looking to allocate that
18 amount in -- in fixed percentages.

19 So I'm not asking them to think in
20 context of a particular number, just -- just a
21 fixed amount.

22 Q. But you do agree, though, that by the
23 time you asked them the constant sum question,
24 they already have data on how much they
25 actually spent on programming, correct?

1 A. Yes.

2 Q. Okay. And you said earlier you are
3 not asking them to distinguish between when you
4 qualified them, you haven't asked them to
5 distinguish between broadcast programming or
6 cable network programming, that sort of thing,
7 right? You -- is that right?

8 A. Correct.

9 Q. Okay. And you wanted someone with a
10 broad knowledge of programming?

11 A. Correct.

12 Q. Okay. So when they are answering this
13 question, does it matter -- did it matter to
14 the survey results that they were thinking
15 about the programming that they actually -- the
16 programming expenditures they actually incurred
17 versus an imaginary expenditure to allocate
18 among the program categories?

19 A. I don't think it does. It matters to
20 me that they are thinking of a fixed amount.

21 Q. Okay. And did it matter as to volume
22 of the programming?

23 A. I'm not sure I understand your
24 question.

25 Q. If you are asking them to think about

1 a fixed amount, in that fixed amount should
2 they also be thinking about the volume of the
3 programming that would constitute the fixed
4 amount?

5 A. Well, I am asking them about acquiring
6 the programming that was actually broadcast by
7 these stations, so, yes, I'm asking them to
8 think about the mix of that programming and
9 what it consisted of.

10 JUDGE STRICKLER: Is there any
11 assumption in there as to what the value is of
12 any minute of programming across the
13 categories, in terms of how much the cost is,
14 the price is to acquire that programming?

15 THE WITNESS: No.

16 JUDGE STRICKLER: So does that mean de
17 facto it is the same price or it is just --
18 well, zero, it is the same price, zero, right?

19 THE WITNESS: Well, again, we're --
20 we're asking them to express their conception
21 of relative value in the context of allocating
22 this fixed dollar amount. So to your point, I
23 think it is primarily a demand-oriented
24 question, the point you made earlier, you know,
25 it may be taking into account their thoughts

1 about cost to a degree.

2 JUDGE STRICKLER: Thank you.

3 BY MR. OLANIRAN:

4 Q. I think earlier in your direct
5 testimony you said that nothing in the surveys
6 that would have indicated confusion about any
7 of the programming categories with respect to
8 the question there, is that a fair statement,
9 that you saw nothing in the surveys that would
10 have indicated that?

11 A. Well, in my experience in implementing
12 and managing and listening to the conduct of
13 the surveys, I haven't seen any evidence of
14 confusion on the part of the respondents.

15 Q. Did you engage in any particular
16 testing to see whether there is confusion?

17 A. Well, again, we -- we listened to many
18 of the interviews. We conducted a pilot test
19 and listened to those interviews with the WGN
20 questionnaire. I would consider that testing.

21 I'm not sure what other testing you
22 might kind of be -- you might be referring to,
23 but we -- we conducted that testing and
24 monitoring.

25 Q. In the movie category, for example,

1 did you consider whether or not a movie on a
2 commercial station is confused with a movie on
3 a Public Television station?

4 A. Well, certainly in question 4a, we ask
5 for an allocation to movies broadcast by the
6 commercial stations I listed.

7 Q. In question 4a you certainly do that,
8 but in questions 2 and 3, you just have movies.

9 A. That's accurate, yes.

10 Q. Then do you know, for example, whether
11 respondents are confusing, you know, Downton
12 Abbey with any -- which is on Public
13 Television, with any dramatic series on a
14 commercial station?

15 A. Well, when we read the categories, we
16 identified PBS and all other programming
17 broadcast by non-commercial stations, by the
18 non-commercial stations that are included.

19 So that category is specifically
20 delineated and described to encompass all of
21 the programming on that station.

22 Q. And you assume that when you list the
23 eight signals that are respondent systems
24 carrying, that they can automatically discern
25 whether, you know, whether a signal is a PBS

1 station, is a PBS signal, Public Television
2 signal or a commercial station signal?

3 A. No, we don't assume that at all. We
4 actually inform them of the affiliation of the
5 signals and that the signals listed are either
6 commercial or non-commercial, educational,
7 network, independent, et cetera.

8 Q. And you assume based on that
9 identification that they can distinguish the
10 programming, right?

11 A. Well, I assume they are familiar with
12 these stations to begin with as part of their
13 ordinary course of business, and I assume that
14 with that additional information that we
15 provide to them, that that would be consistent
16 with their preexisting understanding.

17 JUDGE STRICKLER: I just want to ask
18 you a question about question 3. Am I right
19 that you included question 3 because it was in
20 response to something that some of our
21 predecessors had ruled on, that you needed a
22 cost basis type of question in there? Was that
23 the motivating force for question 3?

24 THE WITNESS: Not precisely. It was
25 really -- the motivating force was that we had

1 an advertising -- a use in advertising and
2 promotion question in the previous version of
3 the survey that had essentially become useless
4 because these signals weren't being used in
5 advertising and promotion, so that needed to be
6 replaced.

7 So the cost question was the question
8 that we came up with to replace it.

9 JUDGE STRICKLER: And what was the
10 benefit of having that question, the new
11 question in there, new question 3?

12 THE WITNESS: Well, the intention was
13 to, to a certain extent, to get at the supply
14 side issue, but, you know, the primary intent
15 was just to have, again, two questions that
16 would -- that would get the respondents
17 starting to think about relative value and have
18 one that was better for that purpose than the
19 advertising question which had essentially just
20 become a no response.

21 JUDGE STRICKLER: I think you started
22 your answer to me by saying "not precisely."
23 So was question 3 added in part in response to
24 what our predecessors had said there not being
25 a supply-side type question in there?

1 THE WITNESS: There have been issues
2 raised about supply-side in the past, but I
3 don't recall them being specifically raised in
4 the last proceeding by -- by the Judges.

5 JUDGE STRICKLER: So adding question 3
6 was not in response to anything that the Judges
7 previously had said?

8 THE WITNESS: Well, as I indicated, I
9 think, it was a response to the -- on some
10 level to the supply-side issue. I'm not sure
11 of the specific context in which that issue was
12 raised.

13 JUDGE STRICKLER: So it was raised by
14 the Judges?

15 THE WITNESS: At one point or another,
16 yes.

17 JUDGE STRICKLER: I see. And the
18 responses to question 3 played no role in the
19 demand side answers in question 4; is that
20 correct?

21 THE WITNESS: Well, they were intended
22 to be a consideration in the relative value
23 judgment. That was our -- our hope, but I
24 think as I indicated to you, that that -- I
25 think that is -- I acknowledge that that's

1 principally a demand judgment.

2 JUDGE STRICKLER: Thank you.

3 BY MR. OLANIRAN:

4 Q. And also in response to questions from
5 Mr. Laane earlier today, you were responding to
6 a criticism that Dr. Stec, who is a witness for
7 Program Suppliers, had made of the Bortz survey
8 results.

9 And he thought, I think he criticized
10 the Bortz survey results for having variations
11 in terms of responses by the same system and
12 variation in response -- by the same system
13 across the four years, as well as variation in
14 responses by the same system when compared to
15 Horowitz.

16 Do you remember that criticism?

17 A. I do remember that criticism, yeah.

18 Q. And I think you disagreed with him,
19 correct?

20 A. Yes.

21 Q. And why do you disagree with him?

22 A. Well, because I -- my -- my point was
23 that his data set that he used to conduct his
24 analysis included literally every instance of
25 year-to-year comparison, including probably --

1 well, well over half the instances where there
2 were recognizable changes that -- that would
3 have not suggested that responses should
4 necessarily have been consistent.

5 Q. Now, when you talk about recognizable
6 changes, were they changes between 2010 and
7 2011, for example, that would affect a drastic
8 change in allocation from -- from one year to
9 the next?

10 A. Well, I don't know that I would
11 necessarily equate it to a drastic change, but
12 it would effect a change, yes, or could be
13 anticipated to effect a change.

14 Q. And what would that have been, for
15 example, if there was such a variation, a
16 significant variation?

17 A. Well, the principal and the most
18 easily identifiable one would be changes in
19 signal carriage.

20 Q. Okay. But if there was no change in
21 signal carriage, what else would change --
22 would cause there to be a significant variation
23 between those two years, let's say?

24 A. Well, there is many factors that could
25 effect change. There could be changes in the

1 programming on the distant signals in question.
2 There could be changes in management at the
3 cable system. There could be changes in the --
4 in this era, there was a number of
5 circumstances where the size of the cable
6 system changed substantially, reflecting that
7 it had consolidated for reporting certain
8 purposes, so it wasn't really, even though it
9 had the same name, it wasn't really the same
10 system as it had been the previous year.

11 And so there were a variety of factors
12 of that nature. And, in addition, there could
13 be factors unrelated to the specific distant
14 signal considerations, but related to other
15 programming that the system was carrying or
16 other decision-making frameworks that the
17 system has put into effect.

18 Q. Now, did you talk about these changes
19 that would affect -- these changes in your
20 testimony with regard to when there are
21 variations from year to year by the same system
22 -- with regard to survey results or survey
23 allocations by the same system, did you talk
24 about that in your testimony at all?

25 A. I -- in my testimony, no. That was in

1 response to Dr. Stec's analysis.

2 Q. I would like for you to take a look at
3 Exhibit 6021. This is a restricted exhibit.

4 MR. LAANE: This is a restricted
5 exhibit, Your Honor.

6 JUDGE BARNETT: Is there an echo in
7 here?

8 (Laughter.)

9 JUDGE BARNETT: Are you going to be
10 inquiring about the specifics of the exhibit?

11 MR. OLANIRAN: Yes.

12 JUDGE BARNETT: It looks like our
13 guest is automatically leaving the room. Thank
14 you very much.

15 (Whereupon, the trial proceeded in
16 confidential session.)

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1 O P E N S E S S I O N

2 MR. LUTZKER: Your Honor, I will add,
3 the guest is actually an intern in our office.
4 He is from the Washington Center, and he is a
5 lawyer from Mexico. And if it is -- if the
6 group requires, I can have him execute a
7 nondisclosure agreement, since he is working in
8 our office.

9 JUDGE BARNETT: In your office.

10 MR. LUTZKER: We can address that
11 issue.

12 JUDGE BARNETT: Why don't you discuss
13 that with the other participants. However that
14 comes out is really up to you all.

15 MR. LUTZKER: Thank you.

16 JUDGE BARNETT: Welcome back, sir.

17 BY MR. OLANIRAN:

18 Q. The 2010 WGN-only survey also started
19 in December of 2011; is that correct?

20 A. Well, yes, it's all the same survey,
21 so yes.

22 Q. So they commenced at the same time?

23 A. Generally, yes.

24 Q. Okay. And roughly the same portion of
25 the WGNA-only survey would have been completed

1 in 2012; is that right?

2 A. Yes.

3 Q. Roughly the same as the regular Bortz
4 survey?

5 A. Yes. I haven't really broken it out
6 that way, but I would assume so.

7 Q. And you've said that WGN is the most
8 highly retransmitted broadcast signal during
9 2010, right?

10 A. Yes.

11 Q. And you had -- you -- you testified, I
12 think, in the '04-'05 proceeding to the same
13 thing; is that right?

14 A. Yes.

15 Q. Okay. And I think you testified that
16 the reason for such a high retransmission of
17 WGN was the JSC sports that's available on WGN?

18 A. Well, I may have expressed that
19 opinion. You'd have to point me to it. That's
20 -- that's certainly what our survey results
21 would suggest.

22 Q. With regard to the 2010 through 2013
23 period, WGN continues to be the most highly
24 retransmitted programming; is that right?

25 A. That's correct.

1 Q. And do you still believe that the
2 reason it is is because of the sports
3 programming, like, I mean, JSC programming that
4 is under WGN?

5 A. Well, I do believe that. And I
6 believe also that our survey suggests that it
7 is the most valuable programming on WGN.

8 JUDGE STRICKLER: And just so it is
9 clear, I think you may have said this before,
10 or someone else did, the sports programming
11 we're talking about at WGN are the White Sox,
12 the Cubs, and the Bulls?

13 THE WITNESS: Correct.

14 JUDGE STRICKLER: Those are the ones
15 you are referring to when you say it is the
16 most valuable program?

17 THE WITNESS: It is the most -- yes,
18 in terms, that comprises the JSC programming --

19 JUDGE STRICKLER: Thank you.

20 THE WITNESS: -- on WGN America.

21 JUDGE STRICKLER: Not the Blackhawks,
22 just those three? That doesn't include hockey?

23 THE WITNESS: Well, the Blackhawks are
24 carried on WGN Chicago but not on WGN America.
25 So they are not compensable.

1 JUDGE STRICKLER: Thank you.

2 BY MR. OLANIRAN:

3 Q. Is there soccer on WGN?

4 A. Pardon?

5 Q. Is there soccer on WGN?

6 A. On WGN America?

7 Q. WGNA. Yes.

8 A. No.

9 Q. Like you, when I refer to WGN, I mean
10 WGNA.

11 So you created this special process
12 for WGN where you contacted the respondent in
13 advance at a WGNA-only system and you provided
14 him or her with a copy of what you referred to
15 as a program summary; is that correct?

16 A. Yes.

17 Q. Okay. And then after you gave them
18 some time to review the program summaries, you
19 conducted the interview; is that correct?

20 A. Yes.

21 Q. Okay. And as I understand your
22 testimony, the purpose of this special process
23 was so that the WGNA-only system, could
24 consider only compensable programs?

25 A. Correct.

1 Q. And you didn't think that without the
2 special assistance, if you will, that they
3 could accurately reflect -- make allocations
4 among the program -- different program
5 categories that had compensable programming on
6 WGNA?

7 A. Well, we thought that naturally if we
8 just asked them about WGN, they would be making
9 allocations based on all of the programming on
10 WGN and not just the compensable programming.

11 Q. You described the respondents as very
12 knowledgeable about the content the systems are
13 carrying, did you not?

14 A. Yes.

15 Q. And if you were to simply put a
16 statement in the questionnaire that asked them
17 to not consider substituted programming, you
18 didn't think they would have understood that
19 statement?

20 A. I don't think they would have any
21 reason to consider what programming on WGN is
22 substituted versus not.

23 Q. Not even if you told them they are not
24 to consider substituted programming?

25 A. No, to consider in the course of their

1 evaluation or analysis of programming, to
2 consider whether programming on WGN included
3 substituted programming or not and which
4 programming specifically was or wasn't
5 substituted, there is no reason for them to
6 think about that.

7 Q. Maybe I wasn't clear about my
8 question.

9 You had this new process that you
10 never had in any -- in the prior survey
11 results, which is you had -- you provided the
12 respondents in advance summary of programming
13 that is compensable on WGN, correct?

14 A. Correct.

15 Q. So my question to you is this: If you
16 had simply included in your questionnaire a
17 statement that directed the respondents not to
18 consider substituted programming, is it your
19 testimony that the respondents would not have
20 understood what that meant?

21 A. They might have understood the notion
22 of substituted programming, but they have no
23 reason to evaluate -- to do what I did, to go
24 through WGN Chicago's log day by day and WGN
25 America's log and compare the programs to see

1 which have been substituted and which haven't.

2 So they would have -- they are looking
3 -- they are thinking about WGN America in their
4 broader decision-making process. And so the
5 substitution instruction is meaningless.

6 Q. Well, that's really no different from
7 asking the respondents in a regular survey to
8 not consider national programming on ABC, CBS,
9 and NBC, isn't it?

10 A. No, it is entirely different.

11 Q. And why is that?

12 A. Because respondents understand
13 certainly in general terms, and many to a very
14 specific level, what the national network
15 programming is on network affiliated stations
16 and what constitutes non-network programming in
17 my experience.

18 Q. And how are you determining what they
19 understand in one instance versus the other?

20 A. Well, again, there is a familiarity
21 with and an understanding of national network
22 programming from the major broadcast networks.
23 There is no context within the industry whether
24 -- where there is any interest in or need to
25 understand which programming on WGN is

1 substituted and which isn't, for someone who is
2 engaged in making program carriage decisions.

3 Q. So you don't think your respondents
4 understand what substituted programming is?

5 A. Well, they -- they understand the
6 concept of substituted programming. I don't
7 believe they have any reason to understand
8 which programming is substituted and which
9 isn't.

10 Q. With regard to WGNA-plus systems, how
11 are they making that distinction?

12 A. I am not asking them to make that
13 distinction.

14 Q. So they are not?

15 A. No, I don't believe so.

16 Q. So what are the Judges to make of the
17 allocations involving WGNA on WGNA-plus
18 systems? And here is why I asked you that
19 question.

20 You didn't provide a program summary
21 to those WGNA-plus systems, did you?

22 A. No.

23 Q. And no information about the number of
24 programs, right?

25 A. No.

1 Q. And no information about the date
2 part?

3 A. No.

4 Q. And no summary of any kind?

5 MR. LUTZKER: Objection, Your Honor.
6 The phraseology of the questions, what are the
7 Judges to make, which raises questions in terms
8 of the phraseology of the question.

9 I understand where Mr. Olaniran may
10 wish to go, but I believe the question is posed
11 improperly.

12 JUDGE BARNETT: The objection is
13 sustained.

14 BY MR. OLANIRAN:

15 Q. But with respect to the WGNA-plus
16 systems, with regard to the WGNA signal in
17 those systems, you didn't provide any program
18 examples, correct?

19 A. No. We treated WGN like the other
20 distant signals that we asked the respondents
21 about.

22 Q. Okay. You didn't add a statement
23 indicating that they should -- the respondents
24 should only consider substituted programming on
25 WGNA?

1 A. No, because that would have been a
2 meaningless statement.

3 Q. And why is that?

4 A. Because of what I said about --

5 MR. LAANE: Asked and answered.

6 THE WITNESS: -- two minutes ago.

7 MR. LAANE: I would object as asked
8 and answered, but he already started to answer.

9 JUDGE BARNETT: Go ahead, Mr.
10 Trautman.

11 THE WITNESS: Well, I was going to say
12 because of what I said two minutes ago.

13 (Laughter.)

14 BY MR. OLANIRAN:

15 Q. That's good. And with regard to the
16 compensable programming on WGNA, as a
17 proportion of all compensable programming
18 across all distant signals in your -- in your
19 sample, what is that proportion? In other
20 words, what percentage of compensable
21 programming is programming on WGNA?

22 A. I am not really sure I understand your
23 question.

24 Q. What proportion of the total volume of
25 programming in your sample is volume of

1 compensable programming on WGNA? Strike that.

2 I may have mixed up that question.

3 I am trying to understand of the total
4 compensable programming on the distant signals,
5 compensable programming, the total compensable
6 programming, what fraction of that is
7 compensable programming on WGNA?

8 MR. LAANE: I would object if the
9 question is incomprehensible.

10 JUDGE BARNETT: Well, he can answer if
11 he can answer.

12 BY MR. OLANIRAN:

13 Q. Do you understand the question?

14 JUDGE BARNETT: He may answer if he
15 can.

16 THE WITNESS: I am -- I am not sure I
17 understand the question, but in the context of
18 the entire sample, I don't believe I have
19 analyzed that. And I think there is many
20 different ways to analyze that, but I -- I have
21 not looked at that.

22 BY MR. OLANIRAN:

23 Q. So you don't -- you don't know what
24 fraction of total compensable programming is
25 compensable programming on WGNA?

1 A. No, I haven't analyzed that.

2 Q. Do you have any idea at all?

3 A. I would have to look at some of the
4 subscriber minutes analysis that I have seen in
5 these proceedings, but it is certainly not
6 something I have done directly.

7 JUDGE STRICKLER: Having not done it
8 directly, do you recall what that fraction is
9 of the volume?

10 THE WITNESS: I don't. I recall
11 seeing some analyses of weighted subscriber
12 minutes, but I don't recall that specific to
13 the aggregate volume of compensable programming
14 on WGN.

15 BY MR. OLANIRAN:

16 Q. Would it have -- if you knew, would it
17 have mattered whether it was -- WGNA
18 compensable programming was 1 percent of total
19 compensable programming versus 20 percent of
20 the total compensable programming?

21 MR. LAANE: Objection, Your Honor. We
22 have no understanding here, percent of what?
23 Percent of subscriber minutes? Percent of some
24 other metric?

25 JUDGE BARNETT: Sustained.

1 BY MR. OLANIRAN:

2 Q. Percent of volume of compensable
3 programming.

4 MR. LAANE: Objection. Volume is
5 undefined.

6 JUDGE BARNETT: Sustained.

7 BY MR. OLANIRAN:

8 Q. If you knew the total volume of
9 compensable programming -- are you with me?

10 MR. LAANE: Same objection.

11 JUDGE BARNETT: Sustained.

12 BY MR. OLANIRAN:

13 Q. Are you familiar with Dr. Israel's
14 testimony?

15 A. Broadly, yes.

16 Q. Broadly. And where he calculated
17 total compensable minutes?

18 A. That's not a part of what he is -- of
19 what he did that I have focused on.

20 Q. What -- you didn't focus on his
21 calculation of the volume of compensable
22 minutes?

23 A. No, I did not.

24 Q. Let me ask you the question this way.
25 Would it matter -- would it have mattered to

1 you, to how you treat WGN, if WGN was 1 percent
2 of total compensable programming, whatever that
3 fixed volume is, or 20 percent of the total
4 compensable programming?

5 MR. LAANE: Objection, Your Honor, it
6 is still undefined. Percent of what measure?

7 JUDGE BARNETT: Overruled. I think he
8 is talking about the universe at this point.

9 THE WITNESS: Well, now I am going to
10 say I don't understand. I don't understand
11 what -- what do you mean about how I would have
12 treated WGN. I am not sure what you -- what
13 you are getting at.

14 BY MR. OLANIRAN:

15 Q. Would you have undertaken the special
16 process for WGN-only systems that you did if
17 you knew that the universe of compensable --
18 all of the universe of compensable programs,
19 WGN's compensable programming was only
20 1 percent versus 20 percent, let's say?

21 A. Well, I am still not sure what you are
22 getting at, but let me do the best I can here.
23 We undertook it with systems that represented
24 about 30 percent of the systems that we
25 surveyed. Okay? So we undertook that

1 analysis.

2 WGN is carried by roughly 45 --
3 another 45 percent or roughly 75 percent to
4 80 percent of all of the systems, so another 45
5 to 50 percent along with other distant signals.
6 We did not do it with that for reasons
7 completely unrelated to volume of programming.

8 Q. I think I will skip that for now. Can
9 we take a look at the program summary for 2010
10 in Exhibit 6020. Oh, I'm sorry, Exhibit 1001.

11 Look at the template for WGNA.

12 JUDGE STRICKLER: Which exhibit again?

13 MR. OLANIRAN: 1001.

14 JUDGE STRICKLER: Thank you.

15 MR. OLANIRAN: The WGNA-only system.

16 THE WITNESS: There is actually four.

17 Which page?

18 BY MR. OLANIRAN:

19 Q. I'm sorry, C-1. Does that get you
20 there?

21 A. Not to a programming summary.

22 Q. That's the C-1, page C-1 is the
23 beginning of the 2010 WGN-only survey.

24 A. Yes. So it is C-5 you are referring
25 to?

1 Q. That's correct. But before we get to
2 C-5, let's go back to page 2 of the survey
3 itself if that's okay. Are you there?

4 A. Yes.

5 Q. Okay. So before you -- before you get
6 to any questions about ranking or evaluation or
7 any detail, you provide a detailed explanation
8 of what you want the respondent to do, right?

9 A. Yes.

10 Q. In paragraph 1, you talk about the
11 nature of the programming transmitted on WGNA,
12 right?

13 A. Yes.

14 Q. And the second paragraph talks,
15 touches on focusing the respondent about --
16 focusing the respondent on programming about --
17 on WGNA, right?

18 A. Yes.

19 Q. And then paragraph 3 reiterates the
20 programming of interest to the interviewer,
21 right?

22 A. Um-hum.

23 Q. So this -- these first three
24 paragraphs are clearly geared to elicit
25 information about compensable programs, right?

1 A. Well, they are geared to elicit
2 information about programming that's on the
3 programming summary that I'm going to send
4 them.

5 Q. Which presumably are compensable
6 programming, right?

7 A. Yes.

8 Q. And also more detailed than the
9 instructions in the regular, what I consider
10 the regular Bortz questionnaires; is that
11 right?

12 A. Well, I'm not sure they are more
13 detailed. They are explaining what we would
14 like the respondent to do.

15 Q. And you don't think these -- at least
16 these paragraphs are much more pointed than the
17 regular Bortz questionnaire?

18 A. Well, they are different. They are
19 explaining a process of providing information
20 to them.

21 Q. Okay. And you didn't think with this
22 -- these four paragraphs, that your
23 knowledgeable respondent would understand
24 enough about what you were looking for without
25 the program summary?

1 A. No. Again, as I indicated,
2 respondents have no need to or interest in the
3 ordinary course of their business to
4 distinguish between the programming that is on
5 WGN America that is also in Chicago -- also on
6 in Chicago versus the programming that is not
7 carried in Chicago.

8 Q. And now let's -- let's turn to the
9 program summaries for 2010.

10 A. I'm there. It is C-5?

11 Q. That's C-5. Thank you. And this
12 would be the document you provided to the
13 respondent in advance of the interview, right?

14 A. Correct.

15 Q. And you have the program organized
16 based on you have program examples, total
17 number of programs, total hours for each
18 program, and the date part for each program; is
19 that right?

20 A. Yes, I would fairly characterize these
21 as program examples. These are the programs
22 that were compensable on WGNA with minor
23 exceptions for programs that might have only
24 appeared once or didn't -- or, you know, were
25 relatively inconsequential.

1 Q. And the total hours, are they actual
2 hours of compensable programs, correct?

3 A. Yes.

4 Q. Okay. And do you know how that
5 compares to the universe of compensable
6 programs on all the systems?

7 A. Well, again, you have to give me some
8 context. Are you talking subscriber weighted
9 or -- or are you talking -- obviously for these
10 systems, among all of the subscribers on these
11 systems, this is the only compensable
12 programming that any of their subscribers
13 receive. And these constitute about 30 percent
14 of the systems.

15 Q. And let's look at some of the
16 categories. For the category of news and other
17 station-produced programs, you have very
18 specific shows such as prime news, mid-day
19 news, and pre- and post-game shows. Do you see
20 that?

21 A. I see the descriptions, yes.

22 Q. Yes. Are these descriptions actual
23 titles of the shows?

24 A. These are titles from the Nielsen
25 database that we used in 2010.

1 Q. But they are news programs, right?

2 A. Yes, they are -- yes, they are prime
3 news -- a prime time news program and a mid-day
4 news program.

5 Q. And then for the category of live team
6 sports, you actually mention the actual
7 franchises, you mention the Cubs, Cubs
8 baseball, White Sox baseball, and Bulls
9 basketball?

10 A. Yes, we use the title that Nielsen
11 provided.

12 Q. And this is an identification pattern
13 that you repeat for those two categories over
14 the four years of the questionnaires, right?

15 A. Yes.

16 Q. And with respect to the movie
17 category, however, you only label the programs
18 as, you know, featured presentation or movie,
19 the word movie, in the four years, correct?

20 A. Correct.

21 Q. Okay. In fact, aside from the generic
22 label "movie" that you assign, you don't
23 identify a single movie, do you?

24 A. No, I don't identify a single baseball
25 game telecast either.

1 Q. But I think you will agree with me
2 that if you say "Cubs baseball," I think that
3 is much more specific than just the word
4 "movie," don't you think?

5 A. No, I really don't think so.

6 JUDGE STRICKLER: You do have half the
7 teams listed, right?

8 THE WITNESS: Pardon?

9 JUDGE STRICKLER: You have half the
10 teams listed when you say "Cubs baseball." You
11 know the Cubs are playing somebody.

12 THE WITNESS: Well, I suppose that's
13 true.

14 JUDGE STRICKLER: I'm pretty sure it
15 is.

16 (Laughter.)

17 THE WITNESS: Well, yes. It is true,
18 all right. I take your point. But I'm not
19 sure I understand the distinction.

20 BY MR. OLANIRAN:

21 Q. Mr. Trautman, I am certain there are
22 people in the Washington, D.C. metro area that
23 are offended that you can't tell the difference
24 between a generic movie label and a Cubs
25 baseball.

1 A. Well, I certainly can tell the
2 difference between the two programming
3 designations, but I am not sure I understand
4 the distinction.

5 JUDGE STRICKLER: You could have done
6 it with movies too. I mean, Cubs baseball, we
7 know the Cubs are playing somebody. Movies, it
8 would be When Harry Met -- we know Harry met
9 somebody. We don't know it is Sally.

10 (Laughter.)

11 THE WITNESS: Well, Yes, but then we
12 would have had to list, in years there were
13 many movies --

14 JUDGE STRICKLER: That was more of a
15 rhetorical question.

16 THE WITNESS: We would have had to
17 list many. And in years were there were few,
18 we would have been, you know, creating sort of
19 four lines of data for, you know, infrequent
20 appearances of programming.

21 Cubs baseball is a collection of
22 programming, like WGN Prime News, that
23 constituted, you know, a large volume of
24 programming and programs and was a major
25 feature, just as feature presentation was in

1 2010, which was a -- a relatively consistent
2 presentation or branding for a consistently
3 aired movie on WGN.

4 JUDGE STRICKLER: Thank you.

5 BY MR. OLANIRAN:

6 Q. But in all seriousness, I mean, saying
7 "Cubs baseball" evokes intrinsic a branding
8 that saying "feature presentation" or "movies"
9 does not; isn't that true?

10 A. I don't believe that. I believe it is
11 an accurate description, and I believe the
12 movies description is accurate as well.

13 Q. And earlier you indicated that JSC
14 Sports for the duration of the 2010 to 2013
15 years was the primary driver of the popularity
16 of WGNA; is that true?

17 A. Well, again, that would be my
18 experience.

19 Q. Now, what is your -- what evidence do
20 you have, other than the carriage itself, that
21 JSC programming drives WGN as carriage?

22 A. 30 years of experience in the
23 business.

24 Q. What does that mean?

25 A. Just evaluating programming,

1 evaluating programming networks, understanding
2 what drives carriage of programming networks
3 and what the operator clients that I work with
4 consider when they are distributing
5 programming.

6 Q. So Comcast in D.C. would carry WGN
7 because it believes the Cubs, the Bulls, and
8 the White Sox are playing and that's the reason
9 Comcast would carry WGN in D.C.?

10 A. Well, I would say it is a principal
11 reason, yes.

12 Q. Really?

13 JUDGE STRICKLER: When you say it is
14 your experience that tells you that, what in
15 your experience leads you to that conclusion?
16 Talking to people? Reading something? Fill
17 that in, if you would.

18 THE WITNESS: Well, in -- in working
19 with cable operators and understanding the
20 history of super-stations being pulled that
21 virtually always featured live professional or
22 college team sports and those stations being
23 far more widely distributed than any other
24 types of distant signals for essentially the
25 entire history of these -- that I have been

1 involved with these proceedings, so that
2 experience.

3 JUDGE STRICKLER: So you see the
4 correlation between distant retransmission of
5 stations and stations that are predominant with
6 regard to their -- their retransmission of
7 professional and college sports?

8 THE WITNESS: That's -- that's my
9 experience, yes.

10 JUDGE STRICKLER: That's an anecdotal
11 over many years of experience?

12 THE WITNESS: Yes, yes, it is an
13 anecdotal judgment to be sure.

14 JUDGE STRICKLER: Thank you.

15 BY MR. OLANIRAN:

16 Q. And so let's take the New York market,
17 for example. New York has their Giants, the
18 Mets, the Jets, the Knicks, the Yankees, right?

19 A. Yes.

20 Q. And they won the Superbowl in 2012, I
21 think, right?

22 A. Yes.

23 Q. Okay. You have Boston which has the
24 Patriots, the Celtics, and the Red Sox, and Red
25 Sox won the series in 2013, right?

1 A. Yes.

2 Q. And now I have lost count of how many
3 Superbowls the Patriots won, but I'm sure they
4 won Superbowls in that time frame too, right?

5 JUDGE STRICKLER: A few.

6 BY MR. OLANIRAN:

7 Q. And then you have the LA market which
8 has Lakers, Clippers, Dodgers, and Angels,
9 right? Right?

10 A. Sure.

11 Q. And they won the NBA Championship in
12 2010, right?

13 A. Um-hum.

14 Q. So why hasn't -- and your testimony is
15 that this Chicago Cubs, the Bulls franchise is
16 what's driving -- strike that.

17 If the sports franchise that we talked
18 about in Chicago is driving the WGNA carriage
19 throughout the nation, why is it that that
20 pattern has not been replicated for the
21 flagship stations in those major cities that I
22 just -- that I just mentioned?

23 A. Well, to begin with, it was replicated
24 at one time for super-stations that originated
25 from those cities that featured live

1 professional and college team sports, but
2 you're actually -- well, in my opinion, you're
3 making my point because when you examine WGN's
4 carriage on distant signals, you find that it
5 is less likely to be carried in the northeast,
6 at least to 100 percent of subscribers on a
7 distant basis than it is in the midwest, where
8 the draw of -- of the professional sports teams
9 is likely to be greater.

10 And you see, for example, a WPIX that
11 gets some distant signal distribution, is one
12 of the more widely distributed distant signals,
13 and that is predominantly in the northeast. So
14 I think you are making my point. At least
15 that's how I take it.

16 Q. My question is why hasn't that pattern
17 been replicated for KCAL, which as the L.A.
18 market, has successful sports franchises?

19 A. Well, certainly WGN is the entity that
20 has continued to pursue the super-station
21 designation, so to speak, but, you know, I
22 think it has been replicated in terms of when
23 you look at distant signal carriage. It is on
24 a much smaller station, but it has been
25 replicated.

1 Q. Why --

2 JUDGE STRICKLER: Excuse me. When you
3 say WGN has pursued the super-station model,
4 what does that mean? How do you pursue a
5 super-station model?

6 THE WITNESS: Well, they have gone
7 through the process of the programming
8 substitution as was mentioned and created sort
9 of a version of themselves, WGN America, for
10 national distribution.

11 JUDGE STRICKLER: Thank you.

12 THE WITNESS: None of the other
13 stations have done that.

14 JUDGE STRICKLER: Is that what TBS did
15 before it became a cable station?

16 THE WITNESS: I am not sure what the
17 substituted programming situation was prior to
18 it becoming a cable network on WTBS.

19 JUDGE STRICKLER: Thank you.

20 BY MR. OLANIRAN:

21 Q. Why isn't that carriage simply legacy
22 carriage?

23 A. Well, I think to some extent it may be
24 legacy carriage.

25 Q. Okay.

1 A. But legacy carriage is about retaining
2 subscribers and retaining subscribers is as or
3 more important to a cable operator, especially
4 these days, than attracting new subscribers.

5 Q. That's a fair point, but retaining
6 subscribers could also mean retaining small
7 amounts of subscribers by simply carrying WGNA?

8 A. Well, small amounts of subscribers are
9 very valuable.

10 Q. I don't -- I don't disagree with you
11 at all, but my point simply is is isn't it the
12 case that what's the carriage of WGNA is
13 attributable to the legacy -- to legacy
14 carriage for subscribers, however small?

15 A. I'm sorry, I didn't quite get your
16 question there.

17 Q. I am saying the -- the retransmission
18 of the -- the frequent retransmission of WGNA
19 could be attributable to the interest of -- to
20 satisfying the interest of a small number of
21 subscribers?

22 A. Well, I think you could say that about
23 many, many, many cable networks that are
24 carried for purposes of attracting and
25 retaining subscribers. So I don't think that's

1 really a distinction because the whole -- one
2 of the primary bases of cable television and
3 offering 3- to 400 channels is to offer broad
4 packages that satisfy the interest and needs of
5 relatively small groups of subscribers.

6 Q. Okay. So the answer to my question is
7 yes?

8 A. Well, the answer to your question is
9 WGN is similar in that respect to other cable
10 networks.

11 Q. Okay. And WGNA converted to a cable
12 network, I think, beginning in 2014, I think
13 concluded in 2015, correct?

14 A. That's correct, yes.

15 Q. Is there any sports on WGN
16 post-conversion?

17 A. No, there is not.

18 MR. OLANIRAN: That's all I have, Your
19 Honor.

20 JUDGE BARNETT: Thank you, Mr.
21 Olaniran.

22 Mr. Stewart, do you have four minutes
23 or less? You said a minute.

24 CROSS-EXAMINATION

25 BY MR. STEWART:

1 Q. Mr. Trautman, my name is John Stewart,
2 and I'm here representing the Commercial
3 Television Claimants in this proceeding.

4 I just had one question for you.
5 After responding to a question from Judge Feder
6 about whether you had seen any evidence in your
7 survey responses of a failure of your
8 respondents to understand the categories, you
9 went on to then talk about how in your
10 experience these respondents are well able to
11 understand the categories that you used.

12 And you named the movies category, the
13 syndicated programs category, the live sports
14 category, and the devotional category. Did you
15 omit the news and public affairs category
16 because you believe that your respondents would
17 have difficulty in understanding that category?

18 A. No, that was just an omission on my
19 part.

20 Q. Another example of the problem of
21 using examples. And that's all for me. Thank
22 you. Less than one minute, I would say.

23 JUDGE BARNETT: Huzzah, Mr. Stewart.
24 I think we have done enough today. At the risk
25 of beating this dead horse, please recall that

1 we will have a power outage from 6 p.m.
2 tomorrow until Tuesday morning. We have been
3 pursuing this all around the Library, and it
4 appears that the CRB website will not be active
5 because of the power outage.

6 But the electronic filing system,
7 which is hosted on a cloud, will be accessible.
8 You can't get to it through the Library,
9 through clicking through somehow -- I am not
10 sure you can even do that before -- but you can
11 either Google and scroll down or put in your
12 browser <https://app-crb.gov> and that should get
13 you, if should you need to do any filing during
14 the shutdown period.

15 We will be having a President's Day
16 holiday on Monday. We will reconvene on
17 Tuesday morning at 9:00 o'clock. Anything else
18 for the good of the order of this afternoon?
19 Mr. MacLean?

20 MR. MacLEAN: Your Honor, I just
21 wanted to raise a point about time. In our --
22 the parties' joint notice of allocation phase,
23 parties witness list and allocation of time, we
24 have -- we have agreed amongst ourselves on an
25 allocation. You haven't mentioned it yet, so I

1 just thought I would raise it to your
2 attention.

3 JUDGE BARNETT: Thank you.

4 MR. MacLEAN: I may not be the only
5 one in the room doing this, but I have been
6 recording time. And, you know, if anybody
7 wants to rebut me, that would be fine, but I
8 thought it would be useful so we can all stay
9 focused on hitting our -- keeping our
10 presentations directed and focused, if we -- if
11 we just keep track as we go.

12 JUDGE BARNETT: Thank you. I
13 appreciate that.

14 MR. MacLEAN: So my own estimate or my
15 own record here shows that JSC is currently at
16 153 minutes; CTV is currently at 37 minutes, up
17 from yesterday of 36 minutes.

18 (Laughter.)

19 MR. MacLEAN: PTV at 30 minutes; CCG
20 at 26 minutes; SDC at 34 minutes; my colleague
21 Arnie Lutzker having been the only person to
22 exceed his time on his opening statement
23 yesterday.

24 MR. GARRETT: Move to dismiss.

25 (Laughter.)

1 MR. MacLEAN: And Program Suppliers
2 are at 275 minutes.

3 JUDGE BARNETT: Thank you. We will
4 take that as your proffer, Mr. MacLean. I
5 don't want any written motions about correcting
6 that record, but I presume that you
7 professionals will all consult with one another
8 and make sure that you are in the ballpark as
9 far as your time allocations and that you will
10 continue to be so.

11 This is probably not the appropriate
12 time, and maybe I won't say anything about it,
13 but I will anyway, and that is in our statute,
14 there was -- there is a negotiated provision
15 regarding discovery in distribution
16 proceedings.

17 And I think maybe, in my litigation
18 experience, at least, even in multi-party
19 litigation, when there was a deposition one or
20 two lawyers at most were there for each party,
21 not four or five. And the deposition prepared
22 the examination and cross-examination for a
23 much more efficient presentation. Just saying.

24 If the issue should ever come up
25 again, you might want to consider discussing

1 the issue with your congressional committee and
2 reconsidering whether discovery might be --
3 deposition discovery might be appropriate in
4 distribution proceedings.

5 We understand why it was eliminated,
6 the goal being efficiency, but, you know, there
7 is efficiency; and there is efficiency. And
8 when you have five lawyers for each party in
9 the room as opposed to two at a deposition, you
10 know, there is a balance to be made.

11 So overstepping my bounds, no more, I
12 will say we are at recess until 9:00 o'clock on
13 Tuesday morning.

14 (Whereupon, at 4:31 p.m., the trial
15 recessed, to reconvene at 9:00 a.m. on Tuesday,
16 February 20, 2018.)

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CERTIFICATE

I certify that the foregoing is a true and accurate transcript, to the best of my skill and ability, from my stenographic notes of this proceeding.

2-16-18Ker Bryant

Date

Signature of the Court Reporter

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